

Supreme Court of India

Nasiruddin vs State Transport Appellate ... on 29 August, 1975

Equivalent citations: 1976 AIR 331, 1976 SCR (1) 505

Author: A Ray

Bench: Ray, A.N. (Cj)

PETITIONER:

NASIRUDDIN

Vs.

RESPONDENT:

STATE TRANSPORT APPELLATE TRIBUNAL

DATE OF JUDGMENT 29/08/1975

BENCH:

RAY, A.N. (CJ)

BENCH:

RAY, A.N. (CJ)

MATHEW, KUTTYIL KURIEN

KRISHNAIYER, V.R.

FAZALALI, SYED MURTAZA

CITATION:

1976 AIR 331                      1976 SCR (1) 505

1975 SCC (2) 671

CITATOR INFO :

D                      1983 SC 46 (21)

ACT:

United Provinces High Courts (Amalgamation) Order, 1948, Paragraphs 7 and 14-Seat of the High Court-Allahabad, if the permanent seat of High Court-Chief Justice, if can reduce the areas in Oudh.

Interpretation of Statutes-Plain and unambiguous words, when could be interpreted in their ordinary sense.

HEADNOTE:

Paragraph 7 of the United Provinces High Courts (Amalgamation) Order, 1948, provides that (1) The new High Court shall have, in respect of the whole of the United Provinces, all such original, appellate and other jurisdiction as, under the law in force immediately before the appointed day, is exercisable in respect of any part of that province by either of the existing High Court; (2) The new High Court shall also have in respect of any area outside the United Provinces all such original, appellate and other jurisdiction as under the law in force immediately before the appointed day is exercisable in respect of that

area by the High Court in Allahabad.

Paragraph 14 of the Order provides that the new High Court, and the judges and division 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. The first proviso to this paragraph provides 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 Justice, 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. The second proviso to this paragraph provides 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.

Respondent No. 1 and respondent No. 3 filed writ petition No. 3294 of 1970 in the High Court at Allahabad. One of the grounds in the writ petition was that the Lucknow Bench of the Allahabad High Court had no jurisdiction to entertain and decide the writ petition No 750 of 1964 filed by the appellant, because the dispute arose at Bareilly in Rohilkhand Division, which was within the exclusive jurisdiction of the Allahabad High Court, sitting at Allahabad, and it had nothing to do with the Oudh territory. The matter was referred to the Full Bench.

Writ Petition No. 470 of 1971 filed in the High Court at Lucknow and Criminal Revision No. 270 of 1973 filed in the High Court at Allahabad were also referred to the Full Bench.

Five questions were referred for decision to the Full Bench. The majority View of the Full Bench gave the following answers:

- (1) A case falling within the jurisdiction of Judges at Lucknow should be presented at Lucknow and not at Allahabad.
- (2) However, if such a case is presented at Allahabad the Judges at Allahabad cannot summarily dismiss it only for that reason. The case should be returned for filing before the Judges at Lucknow and where the case has been mistakenly or inadvertently entertained at Allahabad a direction should be made to the High Court Office to transmit the papers of the case to Lucknow.

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- (3) A case pertaining to the jurisdiction of the Judges at Lucknow and presented before the Judges at Allahabad cannot be decided by the Judges at Allahabad in the absence of an order contemplated by the second proviso to

Article 14 of the Amalgamation Order, 1948.

- (4) The expression "in respect of cases arising in such areas in Oudh" used in the first proviso to paragraph 14 of the High Court (Amalgamation) Order, 1948, refers to legal proceedings including civil cases criminal cases, petitions under Articles 226, 227 and 228 of the Constitution and petitions under Articles 132, 133 and 134 of the Constitution instituted before the Judges sitting at Lucknow and having their origin, in the sense explained in the majority judgment in such areas in Oudh as the Chief Justice may direct. The expression "arising in such areas in Oudh" refers to the place where the case originated in the sense explained in the majority judgment and not to the place sitting of the last court or authority whose decree or order is being challenged in the proceedings before the High Court.
- (5) The Lucknow Bench have no jurisdiction to hear writ petition No. 750 of 1964 which have rise to writ petition No. 3294 of 1970.

Two appeals have been preferred to this Court on the basis of special leave granted by this Court one appeal is by certificate.

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HELD: (i) If the precise words used are plain and unambiguous, they are bound to be construed in their ordinary sense. The mere fact that the results of a statute may be unjust does not entitle a Court to refuse to give it effect. If there are two different interpretations of the words in an Act, the Court will adopt that which is just, reasonable and sensible rather than that which is none of those things. If the inconvenience is an absurd inconvenience, by reading an enactment in its ordinary sense, whereas if it is read in a manner in which it is capable, though not in an ordinary sense, there would not be any inconvenience at all; there would be reason why one should not read it according to its ordinary grammatical meaning. Where the words are plain the Court would not make any alteration. [515A-C]

(ii) The word "or" in paragraph 14 cannot be read as "and". The Order describes the High Court as the new High Court. The two High Courts have amalgamated in the new High Court. The seat is at Allahabad or at such other places as may be determined. There is no permanance attached to Allahabad. If that were the intention of the order, the word "and" instead of the word "or" would have been used. Other places may be determined by the Chief Justice in consultation with the Governor. It is left to prudence of the authorities mentioned as to what other places should be determined. In the normal understanding of the matters, it is left to the discretion of the authorities as to whether

the seats at Allahabad as well as at Lucknow will be changed. Both places may continue. Both places may be changed. Lucknow is the seat of the Government. Allahabad has also the history that the High Court was there before the Order. Lucknow has been the principal place of Oudh. The order aimed at giving status to the Oudh Chief Commissioner's Court as that of the High Court. It is difficult to foresee the future whether the authorities will change the location to other places but no idea of permanent seat can be read into the order. One can only say that it is the wish and hope that both Allahabad and Lucknow will be the two important seats so that history is not wiped out and policy is not changed. [515-A, D-G]

(iii) The unreasoning of the High Court that the Chief Justice might reduce the areas in Oudh because the words "as the Chief Justice may direct" occur immediately after words "in such areas in Oudh" is not correct. First, the words "from time to time" apply only to the nomination of Judges by the Chief Justice to sit at Lucknow and not to the words "such areas in Oudh as the Chief Justice may direct". The important words in the first proviso to paragraph 14 of the Order are "such judges of the new High Court, not less than two in number, as the Chief Justice may, from time to time nominate, shall sit at Lucknow." These words indicate that the power of the Chief Justice to nominate Judges, who shall sit at Lucknow is to be exercised from time to time meaning thereby that the power can be exercised as often as may be necessary. Second, the words "in

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respect of cases arising in such areas in Oudh, as the Chief Justice may direct" occur in the collocation of words "that the Judges nominated 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." The words "as the Chief Justice may direct" mean that exercise the power to direct what the areas in Oudh are for exercise of jurisdiction by Judges at Lucknow Bench. Once that power is exercised, it is exhausted. The reason is that the areas once determined should hold good on account of certainty and to dispel problems being created from time to time by increase or decrease of areas. [516B-E]

(iv) Section 14 of General Clauses Act cannot have any application because a different intention appears in paragraph 14 of the Order. [517-D]

(v) The sum and substance as well as the spirit of the order is that under the first proviso to paragraph 14 Lucknow becomes the seat in respect of cases arising in areas in Oudh. There is no other provision except paragraph 14 in the order as to what the areas in Oudh are or will be. Historically, only the same 12 Districts continued to be comprised in Oudh. When the Order came into existence in 1948, it was for the Chief Justice to direct the areas in

Oudh which would be within the jurisdiction of the Lucknow Bench. The direction which the Chief Justice has given once with regard to the areas in Oudh remains unaltered. [516F-H, 517A & C]

(vi) If the cause of action arise wholly or in part at a place within the specified Oudh areas, the Lucknow Bench will have jurisdiction. If the cause of actions arises wholly within the specified Oudh areas, it is indisputable that the Lucknow Bench would have exclusive jurisdiction in a 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. The Court will find out in each case whether the jurisdiction of the Court is rightly attracted by the alleged cause of action. [518D-F]

#### JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1940- 1941 of 1972.

Appeal by Special Leave from the Judgment and order dated the 17th December, 1971 of the Allahabad High Court in Writ Petition No. 3294 of 1970 and Criminal Appeal No. 254 of 1974.

From the Judgment and order dated the 28th March, 1973, of the Allahabad High Court in Criminal Revision No. 270 of 1973.

Sarjoo Prasad, R.N. Sharma, H.D. Srivastava, Hari Nath Tihari, B.C. Saxena and C.P. Lal for the Appellant in C.A. Nos. 1940-1941/72.

F.S. Nariman, G.L. Verma, S.P. Singh, R.P. Singh, S.K. Bagga and Mrs. S. Bagga for the Intervener in Allahabad Bar Association in C.A. 1940/72.

Yogeshwar Prasad, G.N. Verma, S.P. Singh, R.P. Singh, S.K. Bagga and Mrs. S. Bagga for the Intervener in Allahabad Bar Association in C.A. 1941/72.

The Judgment of the Court was delivered by Ray, C.J.-Two of these appeals are by special leave and one by certificate from the judgment dated 17 December, 1971 of the Full Bench of the High Court at Allahabad.

Civil Appeal No. 1940 of 1972 arises out of the Writ Petition No. 3294 of 1970. Writ Petition No. 3294 of 1970 was filed before the Lucknow Bench of the High Court by respondents Nos. 3 to 9 for quashing the order dated 12 May, 1970 passed by the State Transport Appellate Tribunal at Lucknow. The respondents also claimed the direction that the judgment of the High Court sitting at Lucknow dated 15 September, 1966 in Writ Petition No. 750 of 1964 is a nullity.

The facts in Writ Petition No. 3294 of 1970 are these. The Regional Transport Authority, Bareilly fixed the strength of Chandausi-Rajghat route at 5 stage carriage permits. The appellant and the respondent No. 3 applied for grant of permits. The Regional Transport Authority, Bareilly, by order dated 2 October, 1961 instead of granting five permits, increased the strength of the route to 15 permits and granted one permit each to the appellant, the respondent No. 3 and 13 others. The permit granted to the appellant was valid from 9 June, 1961 to 8 June 1964.

The unsuccessful appellants filed appeals against the order. By an order dated 28 March, 1963, the State Transport Appellate Tribunal at Lucknow allowed all the nine appeals and remanded the matter to the Regional Transport Authority, Bareilly, for reconsideration. The Regional Transport Authority, Bareilly, by an order dated 28 April, 1964 granted five permits, one of which was granted to the respondent No. 1. The appellant was not granted a permit.

The Regional Transport Authority, Bareilly had, in the meanwhile, 20 February, 1963, increased the strength of the routes from 5 to 15 and invited applications. Respondents No. 4, 5 and 7 applied for the grant of permits.

The appellant filed Writ Petition No. 750 of 1964 before the Judges of the High Court sitting at Lucknow, challenging the order of the Appellate Tribunal, Lucknow, dated 28th March, 1963 as well as the order of the Regional Transport Authority, Bareilly dated 28 April, 1964. On 9 June 1966 the appellant succeeded in his Writ Petition No. 750 of 1964. The order of the Appellate Tribunal, Lucknow, dated 28 March, 1963 and the Regional Transport Authority, Bareilly, dated 28 April, 1964 were quashed and the Appellate Tribunal was directed to re-hear the appeals on merits.

On 1 November, 1965, the Regional Transport Authority, Bareilly, rejected the application of the appellant for the renewal of his permit on the ground that the permit granted to him originally was set aside by the Appellate Tribunal by an order dated 28 March, 1963. The appellant preferred an appeal to the Appellate Tribunal and succeeded on 8 January, 1968. On 17 June, 1968, the Appellate Tribunal, in pursuance of the orders of the High Court in Writ Petition No. 750 of 1964, issued notice to the 15 persons who had been granted permits originally and the 9 persons, who had preferred appeals, regarding rehearing of the appeals. Against the filed Writ Petition No. 4213 of 1968 in the High Court at Allahabad. The writ petition was admitted and a stay order was granted. However, on 25 April, 1968, the stay order was vacated.

The Appellate Tribunal at Lucknow, pursuant to the orders in Writ Petition No. 750 of 1964, heard the appeals and directed the Regional Transport Authority, Bareilly to grant one permanent stage carriage permit to each of the respondents Nos. 10 to 12. Inasmuch as the appellant was granted a permit in pursuance of the order in Writ Petition No. 750 of 1964, the Appellate Tribunal did not think it necessary to pass any order in his case.

Respondent No. 1 and respondent No. 3 filed writ petition No. 3294 of 1970 in the High Court at Allahabad. One of the grounds in the writ petition was that the Lucknow Bench of the Allahabad High Court had no jurisdiction to entertain and decide the writ petition No. 750 of 1964, because the dispute arose at Bareilly in Rohilkhand Division, which was within the exclusive jurisdiction of the

Allahabad High Court, sitting at Allahabad, and it had nothing to do with the Oudh territory. The matter was referred to the Full Bench.

In Civil Appeal No. 1941 of 1972 the appellants filed writ petition No. 470 of 1971 in the High Court at Lucknow for a writ of certiorari for quashing order dated 11 December, 1970 passed by the Deputy Director of Consolidation, Shahjahanpur, with headquarters at Lucknow. The appellants filed objections under section 9 of the Consolidation of Holdings Act, 1954. Their objections were allowed by the Consolidation officer. On appeal the order was upheld by the Settlement Officer, Consolidation, Shahjahanpur. The respondent No. 1 went up in revision and the Deputy Director, Consolidation, on 11 December, 1970, set aside the order. It is this order which forms subject-matter of writ petition No. 4170 of 1971. On 26 July, 1971 the writ petition was listed for orders before a Division Bench consisting of the Chief Justice of the High Court and another learned Judge sitting at Lucknow. The Registry of the High Court at Lucknow reported that the petition related to the District of Shahjahanpur and question was raised as to the competency of the writ petition being presented before the Bench sitting at Lucknow. The matter eventually came before the Full Bench.

Criminal Appeal No. 254 of 1974 arises out of the Criminal Revision No. 270 of 1973 filed in the High Court at Allahabad. The revision relates to the sentence under section 25 of the Arms Act passed by the Temporary Civil & Sessions Judge, Rae Bareilly. Question arose as to whether the revision should have been filed before the Lucknow Bench. Eventually the matter came before the Full Bench.

It is in this context that the following five questions were referred for decision to the Full Bench :

"(1) Can a case falling within the jurisdiction of the Lucknow Bench of this Court be presented at Allahabad ?

(2) Can the Judges sitting at Allahabad summarily dismiss a case presented at Allahabad pertaining to the jurisdiction of the Lucknow Bench ?

(3) Can a case pertaining to the jurisdiction of Lucknow Bench, presented and entertained at Allahabad, be decided finally by the Judges sitting at Allahabad, without there being an order as contemplated by the second proviso to Article 14 of the U.P. High Court (Amalgamation) order, 1948 ?

"(4) What is the meaning of the expression "in respect of cases arising in such areas in Oudh" used in first proviso to Article 14 of the High Court (Amalgamation) order, 1948 ? Has this expression reference to the place where the case originated or to the place of the sitting of the last Court of authority whose decree or order is being challenged in the proceedings before the High Court ? (5) Whether this writ petition can be entertained, heard and decided by the Judges sitting at Lucknow ?

The majority view of the Full Bench gave the following answers:-

"(1) A case falling within the jurisdiction of Judges at Lucknow should be presented at Lucknow and not at Allahabad.

(2) However, if such a case is presented at Allahabad, the Judges at Allahabad cannot summarily dismiss it only for that reason. The case should be returned for filing before the Judges at Lucknow and where the case has been mistakenly or inadvertently entertained at Allahabad, a direction should be made to the High Court office to transmit the papers of the case to Lucknow.

(3) A case pertaining to the jurisdiction of the Judges at Lucknow and presented before the Judges at Allahabad cannot be decided by the Judges at Allahabad in the absence of an order contemplated by the second proviso to Article 14 of the Amalgamation order, 1948. (4) The expression "in respect of cases arising in such areas in oudh" used in the first proviso to Article 14 of the High Court (Amalgamation) order, 1948, refers to legal proceedings, including civil cases, criminal cases, petitions under Articles 226, 227 and 228 of the Constitution and petitions under Articles 132 133 and 134 of the Constitution instituted before the Judges sitting at Lucknow and having their origin, in the sense explained in the majority judgment in such areas in oudh as the Chief Justice may direct. The expression "arising in such areas in oudh" refers to the place where the case originated in the sense explained in the majority judgment and not to the place sitting of the last court or authority whose decree or order is being challenged in the proceeding before the High Court. (5) The Lucknow Bench have no jurisdiction to hear writ petition No. 750 of 1964 which gave rise to writ petition No. 3294 of 1970."

The United Provinces High Courts (Amalgamation) order, 1948, hereinafter referred to as the order, was promulgated under section 229 of the Government of India Act, 1935. The order came into effect on the appointed day, namely, 26 July, 1948. "Existing High Court" in the order means the High Court referred to in Section 219 of the Government of India Act as the High Court in Allahabad and the Chief Court in Oudh. As from the appointed day, the High Court at Allahabad and the Chief Court in Oudh shall constitute one High Court by the name of the High Court of Judicature at Allahabad referred to as "the new High Court" (Paragraph 3).

The two crucial provisions are Paragraphs 7 and 14 in the order. The High Court referred to the provisions of the order as Articles but we have referred to the same as Paragraphs. Paragraph 7 is as follows :

"7. (1) The new High Court shall have, in respect of the whole of the United Provinces, all such original, appellate and other jurisdiction as, under the law in force immediately before the appointed day, is exercisable in respect of any part of that Province by either of the existing High Courts. (2) The new High Court shall also have in respect of any areas outside the United Provinces all such original, appellate and other jurisdiction as under the law in force immediately before the appointed day is exercisable in respect of that area by the High Court in Allahabad."



Paragraph 14 is as follows:

"14. The new High Court, and the judges and division 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 Justice, 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."

The High Court considered paragraphs 7 and 14 of the Orders to mean that the new High Court has its seat at Allahabad which is the permanent seat. The reasons given by the High Court are three. First, paragraph 3 of the order which states that there will be one High Court by the name of the High Court of Judicature at Allahabad indicates that the permanent seat is at Allahabad. Second, the second proviso to paragraph 14 of the order which confers power on the Justice in his discretion to order that any case or class of cases arising in Oudh areas shall be heard at Allahabad, shows that there is one identifiable permanent seat and that is the principal seat of the High Court at Allahabad. Third, the words "the new High Court and the Judges and division 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" occurring in the main provision of paragraph 14 of the order mean that the word "or" occurring between the words "Allahabad" and "at such other places" is to be read as "and".

The second matter decided by the High Court is that the Judges at Lucknow Bench will hear cases arising in specified Oudh areas as the Chief Justice directs. The High Court held as follows. It is open to the Chief Justice to reduce the areas in Oudh referred to in the list proviso to paragraph 14 of the order and further that the Bench, at Lucknow Bench will hear cases arising in specified Oudh areas as the currence of the Chief Justice. The first proviso to paragraph 11 of the order which speaks of such areas in Oudh followed by the words as the Chief Justice may direct", shows that areas in Oudh will be such as will be specified by the Chief Justice. Under the first proviso to paragraph 14 of the order all cases arising in areas in Oudh as directed be the Chief Justice will be heard at Lucknow.

The High Court further held as follows. The first proviso to Paragraph 14 of the order consists of two parts. The first part requires that as least two Judges will sit at Lucknow. The insistence on Lucknow as a place of sitting under the first proviso overrides the discretion of the Chief Justice to appoint any other place with the approval of the Governor because until the Governor otherwise directs with the concurrence of the Chief Justice, Lucknow will remain a place of sitting. The second part of the first proviso to paragraph 14 of the Order, namely that Judges sitting at Lucknow shall exercise jurisdiction in respect of cases arising in such Oudh areas, specifies the work which the Judges at Lucknow will do, which can be described as amounting in substance to a statutory allocation of the

category of cases mentioned there to the Judges at Lucknow. Such allocation necessarily implies that other Judges will not do that class of work, unless it is also expressly allocated to them.

The third matter decided by the High Court is the interpretation of the second proviso to paragraph 14 of the order, which confers power on the Chief Justice in his discretion to order that any case or class cases arising in the said areas shall be heard at Allahabad. The High Court expressed these views. This proviso shows that Judges a Lucknow Bench are alone competent to hear cases arising in the specified oudh areas and that the order of the Chief Justice under the second proviso alone enables such cases being heard at Allahabad. The second proviso to paragraph 14 of the order is held by the High Court to mean that the Chief Justice has power not only to make a order in respect of cases which have been filed at and are pending a Lucknow but also cases which have not yet been filed or which may be filed in future at Lucknow.

The meaning of the would "heard" in the second proviso to paragraph 14 of the order is not confined to the actual hearing of cases but will include the proceeding stages of the institution of a case and of its, being entertained by the High Court. If cases arising in Oudh areas can be transferred by the Chief Justice for being heard at Allahabad, it obviously means that cases arising in Oudh areas are cases which are instituted because they arise in Oudh areas. The second proviso means that cases covered by the direction of the Chief Justice cannot be instituted at Lucknow but only at Allahabad for being heard there.

The second proviso to paragraph 14 of the order qualifies the second part of the first proviso. The second proviso deals with cases arising in the specified Oudh areas, and provides an exception to the rule stated in the second part of the first proviso. The effect of reading the two provisos together is that the Judges at Lucknow are alone competent to hear cases arising in the specified oudh areas except where the Chief Justice orders that any such case or class of cases shall be heard at Allahabad. On this reasoning the High Court has that paragraph 14 of the order first provides for the place of sitting of the Judges and second specifies the category of cases which will be heard by them.

The High Court also said as follows. The jurisdiction defined by paragraph 7 of the order vests in the entire body of Judges. It is the jurisdiction enjoyed by every Judge of the High Court and extends to all cases throughout the territories of that State. Where that jurisdiction will be exercised is a matter to be determined under paragraph 14 of the order. It may be exercised at Allahabad or it may be exercised at Lucknow or at any other place appointed by the Chief Justice under paragraph 14. The Judges at Lucknow hear cases arising in such areas in Oudh as the Chief Justice directs. It is open to the Chief Justice to reduce the areas from time to time. Cases arising in the areas so removed can no longer be heard at Lucknow. They will be heard at Allahabad or at any other place appointed under the main pro-

vision of paragraph 14. A stage may be reached in the process of reduction where only one area of Oudh alone may remain with the Judges sitting at Lucknow. There is also power in the Chief Justice, by virtue of second proviso, to increase by order that classes of cases arising in Oudh areas shall be heard at Allahabad. Finally, the arrangement that some Judges must sit at Lucknow may be abolished by the Governor with the concurrence of the Chief Justice.

The fourth question on which the High Court expressed its opinion is on the meaning of "cases arising in such areas in Oudh". The High Court expressed the following views. A distinction arises between civil and criminal cases on the one hand and writ petitions under Article 226 on the other. The contention based on Article 225 that Lucknow Bench will not have jurisdiction under Article 226 is wrong because the jurisdiction of the High Court is not only the jurisdiction exercisable before the Constitution came into force but also the jurisdiction which could be conferred on the High Court in future. The Lucknow Bench, therefore, exercises jurisdiction under Article 226.

Though the Lucknow Bench can exercise jurisdiction under Articles 226, 227 and 228, there is limitation on such jurisdiction as far as the Lucknow Bench is concerned. The Lucknow Bench will have jurisdiction under Article 226 only in cases where the right of the petitioner arose first within the Oudh areas. Where an original order passed outside the Oudh areas has been reversed or modified or confirmed at a place within the Oudh areas it is not the place where the ultimate or the appellate order is passed that will attract jurisdiction of the Lucknow Bench. In most cases where an appeal or revision will lie to the State Government, the order will be made at Lucknow. In all such cases, if it be held that the place where a case can be said to arise is where the ultimate or appellate order is passed by the authority, the Judges at Lucknow would then have jurisdiction even though the controversy originally arose and the original order was made by an authority outside the specified Oudh areas. In all cases a writ petition filed in the High Court would be a case arising at Lucknow. It is on this reasoning that the High Court strictly confined the jurisdiction of the Lucknow Bench under Article 226 to the right which the petitioner pursues throughout the original proceedings, the appellate proceedings and thereafter in the High Court. The right of the petitioner is the right which first arose and if the place where the right first arose will be within the Oudh areas then the Lucknow Bench will have jurisdiction.

With regard to the civil and criminal cases, the High Court said that the Lucknow Bench would have jurisdiction in a civil case where the cause of action wholly or in part arose. In a criminal case the Lucknow Bench would have jurisdiction where the offence has been committed.

The conclusion as well as the reasoning of the High Court that the permanent seat of the High Court is at Allahabad is not quite sound the order states that the High Court shall sit as the new High Court and the Judges and Division Bench 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. The word "or" cannot be read as "and". If the precise words used are plain and unambiguous, they are bound to be construed in their ordinary sense. The mere fact that the results of a statute may be unjust does not entitle a court to refuse to give it effect. If there are two different interpretations of the words in an Act, the Court will adopt that which is just, reasonable and sensible rather than that which is none of those things. If the inconvenience is an absurd inconvenience, by reading an enactment in its ordinary sense, whereas if it is read in a manner in which it is capable, though not in an ordinary sense, there would not be any inconvenience at all; there would be reason why one should not read it according to its ordinary grammatical meaning. Where the words are plain the Court would not make any alteration.

The arguments which were presented at the Bar on behalf of the Bar Association at Allahabad as well as the Bar Association at Lucknow suggested that those views can be described to be protagonists of Allahabad or of Lucknow on the one hand and antagonists to Allahabad or Lucknow on the other. The construction is to be dispassionate without any leaning either in favour or against either of the places mentioned in the Order.

The order describes the High Court as the new High Court. The two High Courts have amalgamated in the new High Court. The seat is at Allahabad or at such other places as may be determined. There is no permanence attached to Allahabad. If that were the intention of the Order, the word "and" instead of the word "or" would have been used. Other places may be determined by the Chief Justice in consultation with the Governor. It is left to prudence of the authorities mentioned as to what other places should be determined. In the normal understanding of the matters, it is left to the discretion of the authorities as to whether the seats at Allahabad as well as at Lucknow will be changed. Both places may continue. Both places may be changed. Lucknow is the seat of the Government. Allahabad has also the history that the High Court was there before the order. Lucknow has been the principal place of Oudh. The order aimed at giving status to the Chief Commissioner's Court as that of the High Court. It is difficult to foresee the future whether the authorities will change the location to other places but no idea of permanent seat can be read into the order. One can only say that it is the wish and hope that both Allahabad and Lucknow will be the two important seats so that history is not wiped out and policy is not changed.

The conclusion of the High Court that the first proviso to paragraph 14 of the order means that the areas in Oudh may be decreased is not the correct construction. The first proviso deals with nomination by the Chief Justice from time to time of not less than two Judges sitting at Lucknow. An argument was advanced on behalf of the Bar Association at Allahabad that the words "not less than two in number" indicate that the order did not contemplate the existence of a Division Bench. The words "from time to time" and "not less than two in number" indicate the minimum as two and that more than two Judges may be there. The words "from time to time" suggest not only that Judges may come from Allahabad to Lucknow or vice versa but also that the number may be increased or decreased according to exigencies. The only limitation on the number is that it shall not be less than two.

The High Court held that the Chief Justice might reduce the areas in Oudh because the words "as the Chief Justice may direct" occur immediately after the words "in such areas in Oudh". This reason is fallacious. First, the words "from time to time" apply only to the nomination of Judges by the Chief Justice to sit at Lucknow and not to the words "such areas in Oudh as the Chief Justice may direct". The important words in the first proviso to paragraph 14 of the order are "such Judges of the new High Court, not less than two in number, as the Chief Justice, may, from time to time nominate, shall sit at Lucknow". These words indicate that the power of the Chief Justice to nominate Judges, who shall sit at Lucknow, is to be exercised from time to time meaning thereby that the power can be exercised as often as may be necessary. Second, the words "in respect of cases arising in such areas in Oudh, as the Chief Justice may direct" occur in the collocation of words "that the Judges nominated 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". The words "as the Chief Justice may direct" mean that the Chief Justice exercises the power to direct what the areas in Oudh are for exercise of jurisdiction by Judges at Lucknow Bench. Once that power is exercised it is exhausted. The reason is that the areas once determined should hold good on account of certainty and to dispel problems being created from time to time by increase or decrease of areas.

The sum and substance as well as the spirit of the order is that under the first proviso to paragraph 14 Lucknow becomes the seat in respect of cases arising in areas in Oudh. There is no other provision except paragraph 11 in the order as to what the areas in Oudh are or will be. Historically, the territories with 12 Districts of Lucknow, Faizabad, Sultanpur, Rai Bareilly, Pratapgarh, Barabanki, Gonda, Bahraich, Sitapur, Kheri, Hardoi and Unnao, were brought under the then British Crown within the jurisdiction of the Court of the Judicial Commissioner of Oudh at Lucknow. This was under the Government of India order dated 4 February 1856. (See: Laws of non-Regulations Provinces 1863 by Lord G. Campbell, Judicial Commissioner Oudh). In 195 Oudh Courts Act was passed by the Uttar Pradesh Legislature. The Chief Court (If Oudh with only Chief Justice and four Puisne Judges was established replacing the Judicial Commissioners 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. Later, two more additional Judges were appointed. In this background the Order of 1948 came into existence and the new High Court was established with its seats at Allahabad and Lucknow. It, therefore, follows that when the order came into existence, it was for the Chief Justice to direct the areas in Oudh, which would be within the jurisdiction of the Lucknow Bench.

Under paragraph 7 of the order, the new High Court has jurisdiction in respect of whole of the United Provinces exercisable in respect of any part of that province by either of the existing High Court. Paragraph 14 of the order deals with the seats of the High Court at Allahabad and Lucknow. It is only the first proviso to paragraph 14 of the order which states that unless the Governor of the United Provinces with the concurrence of the Chief Justice otherwise directs, not less than two Judges shall sit at Lucknow in order to exercise in respect of cases arising in such areas in Oudh, the jurisdiction and power vested in the new High Court. The first proviso to paragraph 14 of the Orders specifies the instrumentality through which the jurisdiction vested in the new High Court will be exercised in respect of cases arising in Oudh. The direction which the Chief Justice has given once with regard to the areas in Oudh remains unaltered.

Section 14 of the General Clauses Act states that where by any Act any power is conferred then unless a different intention appears, the power may be exercised from time to time as occasion requires. In the present case section 14 of General Clauses Act cannot have any application because a different intention appears in paragraph 14 of the order. The words "from time to time" occur in the first part of the first proviso to paragraph 14 of the order, in relation to the power of the Chief Justice to nominate Judges of the Lucknow Bench from time to time. The second part of the first proviso to paragraph 14 of the order which speaks of cases arising in such areas in Oudh as the Chief Justice may direct do not attract the application of the words "from time to time." The second part of the first proviso to paragraph 14 shows that such areas in Oudh as the Chief Justice may direct are

areas in respect of which once such direction is given, there is no intention in the order to exercise such power of direction from time to time.

The conclusion of the High Court that the areas in oudh could be increased or decreased by the Chief Justice from time to time is set aside. It is only if Lucknow will ever cease to be a seat of the High Court when the Governor of the Uttar Pradesh with the concurrence of the Chief Justice so directs that the first proviso to paragraph 14 of the order both with regard to sitting of Judges at Lucknow and exercising jurisdiction in respect of cases arising in areas in oudh will cease to have any significance in relation to Lucknow.

The meaning of the expression "in respect of cases arising in such areas in 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 then 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 then 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 part within specified areas in oudh and part outside the specified oudh areas, the litigant will have the choice to institute proceedings either at Allahabad or Lucknow. The Court will find out in each case whether the jurisdiction of the Court rightly attracted by the alleged cause of action.

To sum up. Our conclusions are as follows. First there is no permanent seat of the High Court at Allahabad. The seats at Allahabad and at Lucknow may be changed in accordance with the provisions of the order. Second, the Chief Justice of the High Court has no power to increase or decrease the areas in oudh from time to time. The areas in oudh have been determined once by the

Chief Justice and, therefore, there is no scope for changing the areas. Third. the Chief Justice has power under the second proviso to paragraph 14 of the order to direct in his discretion that any case or class of cases arising in outh areas shall be heard at Allahabad. Any case or class of cases are those which are instituted at Lucknow. The interpretation given by the High Court that the word "heard" confers powers on the Chief Justice to order that any case or class of cases arising in outh areas shall be instituted or filed at Allahabad, instead of Lucknow is wrong. The word "heard" means that cases which have already been instituted or filed at Lucknow may in the discretion of the Chief Justice under the second proviso to paragraph 14 of the order he directed to be heard at Allahabad. Fourth, the expression "cause of action" with regard to a civil matter means that it should be left to the litigant to institute cases at Lucknow Bench or at Allahabad Bench according to the cause of action arising wholly or in part within either of the areas. If the cause of action arises wholly within outh areas then the Lucknow Bench will have jurisdiction. Similarly, if the cause of action arises wholly outside the specified areas in outh then Allahabad will have jurisdiction. If the cause of action in part arises in the specified outh areas and part of the cause of action arises outside the specified areas, it will be open to the litigant to frame the case appropriately to attract the jurisdiction either at Lucknow or at Allahabad. Fifth, a criminal case arises where the offence has been committed or otherwise as provided in the Criminal Procedure Code. That will attract the jurisdiction of the Court at Allahabad or Lucknow. In some cases depending on the facts and the provision regarding jurisdiction, it may arise in either place.

Applications under Article 226 will similarly lie either at Lucknow or at Allahabad as the applicant will allege that the whole of cause of action or part of the cause of action arose at Lucknow within the specified areas of outh or part of the cause of action arose at a place outside the specified outh areas.

The answers given by the High Court to the first three questions are correct save as modified by our conclusions aforesaid.

The answer given by the High Court to the fourth question is set aside. The meaning of cases arising in outh areas will be found out by appropriate courts in the light of this judgment.

The answer to the fifth question is discharged. The matters are sent back to the High Court for disposal in accordance with this judgment.

Parties will Pay and bear their own costs.

V.M.K.

Appeal partly allowed.