

## **Centre Of Indian Trade Unions U.P. State ... vs The Acting Chief Justice, High Court, ... on 30 August, 1989**

**Equivalent citations: AIR1990ALL55, (1990)2UPLBEC946, AIR 1990 ALLAHABAD 55**

ORDER

S. C. Mathur, J.

1. This petition under Art. 226 of the Constitution is directed against the order dated 13-7-1989, Annexure-1, passed by the Acting Chief Justice of this Court, whereby Writ Petition No. 3987 of 198. M/s. J. K. Cotton Spinning and Weaving Mills Company Ltd. v. State of U.P. and others, has been directed to be transferred to the Allahabad Bench of this Court. The order has been passed under the second proviso to clause 14 of the U.P. High Courts (Amalgamation) Order, 1948. A few facts necessary for the disposal of the petition may be stated.

2. There was dispute between the Management of J. K. Cotton Spinning and Weaving Mills Co. Ltd., for short Management, and the workers of the Company which was referred for adjudication to the Industrial Tribunal, Allahabad; it is adjudication Case No. 15 of 1986. The Tribunal gave its award on 24-12-1988; it is popularly known as "Pandey Award". The State Government did not accept the award and cancelled the same by order dated 27-2-1989. The Management has challenged the cancellation order through a writ petition filed at Allahabad which is still pending.

3. The Labour department levied recovery of Rs. 35 lacks against the Company on account of arrears of wages of the workers. The Management has challenged the recovery proceedings by filing another petition at Allahabad which is also pending, although the claim of the petitioner is that it has become infructuous.

4. With effect from 15-5-1989 the Management declared lock-out in the Company. The State Government has declared this lock-out illegal through order dated 17-5-1989. Against this order, the Management has filed writ petition No. 3987 of 1989 at Lucknow. This petition is also pending. Certain interim orders were passed in this petition whereunder the Management was required to make some payment to the workers towards wages. By order dated 22-6-1989 it was also provided that "the order that the officers of the petitioner will not be arrested till the date of hearing shall continue."

5. On 3-7-1989 the State filed counter-affidavit along with C.M. An. No. 8616(W) of 1989 for vacation of the interim order. The same day order was passed "put up with the record in the last week of July, 1989."

6. In the writ petition, the State of U.P., the Additional Labour Commissioner, Kanpur. The District Magistrate , Kanpur City and the Senior Superintendent of Police, Kanpur City, were impleaded as opposite parties 1 to 4. No Labour Union was impleaded. Later some Labour Unions got themselves impleaded. These are (1) Centre of Indian Unions Committee, Kanpur, (2) Bhar-tiya Mazdoor Sangh, (3) Suti Mill Mazdoor Union (HMS), Kanpur and (4) Textile Labour Union, Kanpur. Some of them moved applications for modification or vacation of interim order. The application for implead-ment was made by the last named Union on 6-7-1989 and it was directed by order of the same date to be put up on 12-7-1989.

7. On 10-7-1989 the Management moved an application under Cl. 14 of the Amalgamation Order before the Acting Chief Justice at Lucknow for transfer of Writ Petition No. 3987 of 1989 to the Allahabad Bench of this Court, after serving copies of the application upon the learned Chief Standing Counsel and the the counsel for the Suti Mill Mazdoor Sabha and Bhartiya Mazdoor Sangh. No notice of this application was given to the present petitioner or to its counsel. The application was allowed the same day by order endorsed on the reverse side of the application. A perusal of the order shows that, apart from the learned counsel for the Management, the learned counsel for the Suti Mill Mazdoor Sabha and Bhartiya Mazdoor Sangh, and the learned Standing Counsel Tor the State of U.P. appeared before the Acting Chief Justice and none opposed the transfer of the case.

8. On 12-7-1989 application was moved on behalf of the present petitioner for recall of the transfer order dated 10-7-1989. The order endorsed on the reverse side of the application reads as follows:--

"Hon. K.C. Agarwal, A.CJ.

Since the order dated 10th July, 1989 transferring the writ petition to Allahabad was passed without hearing all the concerned Advocates, I recall the order transferring the file of the present writ petition to Allahabad. List the application before me tomorrow."

Below the above, the order bears the signatures of the Acting Chief Justice and Justice Raza. It is apparent from the language of the order that, the Acting Chief Justice dictated the above order on his own behalf only and not on behalf of Raza J. However, it appears, that the Bench Secretary put up the order before Raza J. also and he appended his signature. However that does not detract from the validity of the order.

9. On 13-7-1989 counter-affidavit of Daulat Ram was filed on behalf of the petitioner to oppose the transfer. After hearing the learned counsel for the parties the Acting Chief Justice again passed the order transferring the case pending at Lucknow to Allahabad. This is the order under challenge in the present petition.

10. At the time of initial hearing Shri V.B. Singh learned counsel for the Management raised preliminary objection against the maintainability of the petition. He submitted that the impugned order was passed after hearing both the parties and it was therefore a judicial order and such an

order could be challenged only in the Supreme Court but could not be challenged through a petition under Art. 226 of the Constitution.

11. Sri R. Mitra countered the objection and submitted that the order is administrative and is amenable to the writ jurisdiction of this Court. In support of the submission he cited 1974 All LJ 653 Madan Mohan Saran v. Vidyadhar Govind Oak.

12. On the subsequent hearing Sri Singh gave up the preliminary objection. Now it is the common case of the parties that the power of transferring cases from Lucknow Bench to the Allahabad Bench of this Court conferred under Clause 14 of the Amalgamation Order is administrative and the order passed therein is also administrative. The submission of the learned counsel for the petitioner is that the said power cannot be exercised arbitrarily and it will have to be exercised on some basis. He has supported his submission by citing number of authorities. According to him the present exercise of power is arbitrary and without basis. The order is also alleged to suffer from the vice of malice in fact and malice in law. The plea of malice in law is sought to be supported by submitting that relevant factors were not taken into consideration while passing the impugned order. The relevant factors allegedly not considered are: (1) the forum of Lucknow Bench was chosen by the Management itself when it was open to the Management to file the petition either at Allahabad or at Lucknow : (2) Workers' interest would suffer; (3) in a socialist democracy slant should be towards the weaker sections of the society like the workers; (4) petitions pending at Allahabad are of different nature; (5) the present petitioner is not a party to the petitions pending at Allahabad; (6) the Management had not complied with this Court's order dated 2-6-1989; (7) having obtained interim order against the arrest of the officers of the Company, the Management wanted to run away from the final hearing of the case; and (8) hearing, of the petition pending at Lucknow had already started.

13. In this petition, opposite parties are (1) The Acting Chief Justice (2) M/s. J.K. Cotton Spinning and Weaving Mills Co. Ltd., (3) Suti Mill Mazdoor Sabha, and (4) Bhartiya Mazdoor Sangh.

14. Before issue of notice appearance was, put in on behalf of the Management through Sri V.B. Singh and the admission of the petition has been opposed by him. We have heard Sri R. Mitra, learned counsel for the petitioner and Sri V. B. Singh learned counsel for the Management.

15. The submissions of the learned counsel for the petitioner have been noticed here-inabove. These submissions are countered by the learned counsel for the Management who urges that the power conferred upon the Chief Justice under the second proviso to Cl. 14 is discretionary and therefore the Acting Chief Justice was under no obligation to give reasons for order but in the present case he has given reason which constitutes basis of the order and therefore the order cannot be said to be arbitrary. He does not admit that relevant factors were not taken into account while passing the impugned order or that irrelevant factors were taken into account. He contends that there is no factual basis in the petition for the allegation of malice in fact and malice in law. In support of their respective submissions, the learned counsel have cited large number of authorities.

16. The second proviso to clause 14 reads as follows:--

"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 term "said areas" refers to the areas comprised in the erstwhile province of Oudh over which the Bench at Lucknow exercises jurisdiction. The above proviso has been subject of interpretation by their Lordships of the Supreme Court in *Nasiruddin v. State Transport Appellate Tribunal*, AIR 1976 SC 331. In paragraph 37 of the judgment at page 341 of the report, their Lordships have summed up their conclusions. Regarding the power of transfer, it has been observed as follows:--

".....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 Oudh areas shall be heard at Allahabad."

17. From the above, it is apparent that the power of transfer conferred under the second proviso to Cl. 14 is discretionary. We may assume in favour of the petitioner that even a discretionary power cannot be exercised arbitrarily and there must be basis therefor. The power however is admittedly administrative. It is neither judicial nor quasi-judicial. It does not become either even when the power is invoked by one of the parties to the litigation. Therefore, while exercising the power either suo motu or on the application of one of the parties to the litigation, the Chief Justice is not obliged to pass a reasoned order containing all the points raised by the parties in support of and against the transfer and his grounds for accepting one contention or rejecting the other. The utmost that may be insisted upon is reflection of some valid basis for the order. By this, we should not be understood as saying down that an unreasoned order of transfer cannot at all be passed. We have made the observation in the context of the arguments of the learned counsel for the petitioner that the order is arbitrary and without basis. We now immediately proceed to consider whether the impugned order reflects some basis or not. If it reflects a basis and that basis is germane to the issue of transfer, it will not be possible to hold that the order is arbitrary.

18. The certified copy of the order filed as Annexure I to the writ petition covers one full sheet of paper and more than half of the other sheet. The original impugned order which is on the record of Writ Petition No. 3987 of 1989 covered two full pages and a quarter of the third page. In the second page of the order, the contention of the learned counsel for the Management has been noticed. The contention noticed is that the three cases have to be connected together and heard at one place and that if the cases are heard at two different places, there may be conflict in judgments and, therefore, it would be in the interest of all the parties that the cases be heard at Allahabad. In the third paragraph, the contention raised on behalf of the petitioner has been noticed. The contention noticed is that the controversies in the three petitions are different and for deciding the points involved in the petition filed at Lucknow, it is not necessary to send it to Allahabad for being connected and decided with the petitions filed at Allahabad. Thereafter the Acting Chief Justice sets before him the principle on which he is required to dispose of the application. He observes "I do not consider it necessary to go into the question as to whether the controversies in these writ petitions are exactly the same or not. What I am required to consider is whether it is in the interest of justice to make an order for transfer of this case to Allahabad. In my view, proper exercise of discretion requires the hearing of this writ petition to be transferred to Allahabad. Even if it was possible to urge that the

petitioner M/s. J. K. Cotton. Spinning and Weaving Mills Company Ltd. has challenged the order dated 17-5-1989, which is different from those which are the subject-matter in Allahabad, that by itself would not be conclusive of the controversy. Discretion requires me to find out whether the parties would be benefited by the disposal of the petitions at one place. I am satisfied about the same. In taking this view, I have considered the principles laid down by the Supreme Court in *Naseeruddin v. State Transport Appellate Tribunal*, AIR 1976 SC 331 ". The emphasised portion in the Acting Cheif Justice' order is pregnant with meaning. This observation has been made in the context of the pleadings of the parties which were raised before the Acting Chief Justice. In the application for transfer, the Management had given the background in which three petitions came to be filed by the Management, two at Allahabad and one at Lucknow. From the background, it appeared that there was dispute between the Management and their workers regarding conditions of service and this dispute had been referred for adjudication to the Industrial Tribunal, Allahabad (Adjudication Cases No. 15 of 1986). The Tribunal gave its award which was acceptable to the Management but was not acceptable to the workers. The award of the Tribunal was published on 24th December, 1988. The wor kers started agitation against the award so much so that the Management had to declare lockout in the factory. The lockout was declared illegal by the State Government by order dated 17-5-1989 against which the Management filed writ petition at Lucknow.

The State Government cancelled the award of the Industrial Tribunal by its order dated 27- 2-1989. Against this cancellation order, the Management has filed writ petition at Allahabad. The Labour Department levied recovery of Rs. 35 lakhs against the Manage ment on account of arrears of wages. This recovery has been challenged by the Management by filing another petition at Allahabad. Thus, in all three petitions came to be filed by the Management, two at Allahabad and one at Lucknow. In substance, the dispute in all the petitions is related to the conditions of service of the workmen of the Management. In paragraph 7 of the affidavit filed in support of the application, the Management asserted that the controversy involved in the petition filed at Lucknow has direct nexus with the cancellation of the Pandey Award against which writ petition has been filed at Allahabad. In paragraph 8, it has been asserted hat the controversy between the Management, the Government and the workers centres round the award of the Industrial Tribunal which has come to be known as Pandey Award.

19. On behalf of the petitioner, counter-affidavit had been filed by Sri Daulat Ram to oppose the transfer application. The counter-affidavit does not contain any serious challenge against the fact that two petitions were pending at Allahabad and one was pending at Lucknow. In respect of the recovery of Rs. 36 lakhs Sri Daulat Ram states that it is not for the period of lockout, but for the period immediately preceding the lockout. He further states in paragraph 6 that the wages have already been paid in accordance with the order of this Court dated 2-6-1989 hence, the petition against recovery filed at Allahabad has become infructuous. In paragraph 7, he states that the matter involved in the petition filed at Lucknow is independent of the two petitions filed by the Management at Allahabad. From the counter-affidavit, it is not at all made out that the main dispute between the parties does not pertain to conditions of service of the workers in respect of which Pandey Award came to be made.

20. Pandey Award as stated earlier was made on 24-12-1988 and lockout was declared with effect from 15-5-1989 and the order cancelling the Pandey Award was made on 22-2-1989. When Daulat Ram states in paragraph 6 of his counter-affidavit that the wages for which recovery notice has been issued pertain to the period immediately preceding the lockout, it is obvious that the period between 24-12-1989 when the award was published and 15-5-1989 when the lockout was declared is covered in the writ petition filed at Allahabad against the recovery notice. It may be that the three writ petitions are directed against different orders or notice but the substratum of the dispute is as regards the conditions of service and there is strong likelihood of Pandey Award coming up for comment or consideration at the time of arguments in the three petitions. Obviously, this is what the Acting Chief Justice had in mind when he made the observation "that by itself would not be conclusive of the controversy". The Acting Chief Justice was exercising administrative powers and no judicial or quasi-judicial powers and, therefore, he was not obliged to write a detailed judgment dealing with each and every point raised by one party and controverted by the other. In the circumstances, we are unable to agree with the submission of the learned counsel for the petitioner that the order of the Acting Chief Justice does not reflect any basis for the transfer of the petition filed at Lucknow to Allahabad.

21. In the counter-affidavit filed by Sri Daulat Ram, it has been emphasised that the Management itself chose the forum of the Lucknow Bench although the forum of Allahabad Bench was also available to it and, therefore, it is not open to the Management now to seek transfer of the petition filed at Lucknow to Allahabad. This point has also been considered by the Acting Chief Justice and rejected with the observation "filing of the petition does not, in any way, come in the way of the petitioner in seeking the relief of transfer." Indeed the mere fact that the Management itself had chosen the forum of Lucknow Bench could not prevent the Chief Justice from passing administrative order of transfer once it was brought to his notice that it was necessary or required on the merits of the case.

22. A large number of authorities were cited by the learned counsel for the petitioner in support of the proposition that even a discretionary power cannot be arbitrarily used. Since we are of the opinion that the discretionary power in the present case has not been arbitrarily used, it is not necessary to refer to the said authorities.

23. The learned counsel has also submitted that it was a case where the workers were pitted against a big industrialist and the workers will suffer in case the petition filed at Lucknow is transferred to Allahabad as they have incurred considerable expense at Lucknow in contesting the writ petition. In paragraph 29 of this petition, it has been stated that the workers have already spent Rs.10,000/- in contesting the petition at Lucknow. No such figure was disclosed in the counter-affidavit of Sri Daulat Ram. No details of this figure have been given. For the reasons to be recorded hereinafter we are not inclined to accept the correctness of the statement contained in paragraph 29. However, even if the statement is treated to be correct, it does not outweigh the judicial expediency for transfer mentioned herein-above. We have observed that Pandey Award is likely to come up for consideration in all the three petitions filed by the Management. It is desirable that when this award comes up for consideration, there should be consistency in Court's finding in respect of this award. If the three petitions are heard by three different Benches, there is likelihood of conflict of decisions

or opinions. This point had been specifically mentioned on behalf of the Management by its learned counsel and it finds mention in the order of the Acting Chief Justice. Obviously, this was also a factor in the context of which the Acting Chief Justice observed "that by itself would not be conclusive of the controversy."

24. It was very vehemently argued by the learned counsel for the petitioner that, the order of the Acting Chief Justice suffered from the vice of malice in law and malice in fact. There is no allegation of personal bias against the Acting Chief Justice. Accordingly the plea of malice in fact is not established. So far as the plea of malice, in law is concerned, the learned counsel for the petitioner cited a large number of authorities for submitting that if relevant factors are not considered or irrelevant factors are considered, it amounts to malice in law. We may assume that in a situation canvassed by the learned counsel, malice in law will be attracted. However, in the present case, in our opinion, the order of the Acting Chief Justice is neither based on any irrelevant factor nor any relevant factor pointed out to him appears to have been omitted. The factor which according to the learned counsel has not been taken into consideration by the Acting Chief Justice is that India is a socialist democracy and it has been held in the decisions of the Supreme Court that in a fight between the employer and workers, the Court's slant should be in favour of the workers. The primary duty of a judicial authority is to apply law. By application of law, as pointed put by us, the order of the Acting Chief Justice is pre-eminently just and fair and required in the circumstances of the case. When an order of transfer was actually required we cannot accept the theory of slant profounded by the learned counsel.

25. The learned counsel made certain submissions which did not appear to us to have been raised before the Acting Chief Justice. At this stage, we pointed out to the learned counsel that it was not permissible for him to raise fresh points to challenge the impugned order. Thereupon, the learned counsel submitted that the petitioner was not afforded opportunity of filing reply to the Management's application for transfer and, therefore, the points which he was pressing could not be brought to the notice of the Acting Chief Justice. We required the learned counsel to point out the paragraph in the writ petition in which this, allegation has been made, and the learned counsel conceded lack of such averment in the writ petition. The hearing of the case stood over for the next day when affidavit was filed by Smt. Subhasini Ali who claimed to be pariokar and member of the State Committee of Centre of Indian Trade Unions. She is the person who has filed affidavit in support of the writ petition also although writ petition has been filed through Sri Daulat Ram who has described himself as Vice President of Indian Trade Unions, U.P. State Committee. In paragraph 1 of the affidavit, Smt. Ali has stated that she was present in the Court when the case was taken up. In paragraph 2, she has stated that copy of the transfer application moved by the Management was not given to the counsel for the petitioner. In paragraph 3, she states that during the course of arguments on 13-7-1989, when pointed out by the counsel for C.I.T.U., the Hon'ble Chief Justice directed the Management's counsel to supply copy of the application and only thereafter copy of the transfer application was given to the counsel of the present petitioner. In paragraph 4, she avers that on receipt of copy of application during the course of arguments, the counsel for the C.I.T.U. sought time to reply the application for transfer but the Acting Chief Justice declined to grant time. In paragraph 5, she states that due to the reasons mentioned in the preceding paragraphs, the petitioner was disabled from placing before the Acting Chief Justice necessary papers and grounds

mentioned in the present petition. AH the averments mentioned herein had been sworn as true to personal knowledge. All the allegations made in this affidavit are false and Smt. Ali has perjured herself by making false oath before this Court. The record of writ petition No. 3987 of 1989 contained counter-affidavit of Daulat Ram reference to which has been made hereinabove. This affidavit was sworn on 13-7-1989 at 9.50 a.m. The Court's functioning at the Lucknow Bench starts at 10.15 a.m. As such, the affidavit of Daulat Ram had been sworn before the hearing of the transfer application started.

Accordingly there was no occasion for the counsel for the petitioner to make grievance for the non-supply of copy of the transfer application during the course of arguments as alleged by Smt., Ali and there was also no occasion for the Acting Chief Justice to decline to grant time. Smt. Ali has obviously tried to mislead this Court by making false averments on oath apart from committing perjury. We strongly deprecate the action of Srimati Ali. We have taken into account this untruthfulness also while not accepting the petitioner's plea that it has already incurred an expense of Rs. 10,000"- at Lucknow.

26. The allegedly relevant factors not considered by the Acting Chief Justice are not mentioned in the counter-affidavit of Sri Daulat Ram. Obviously they were not urged before the Acting Chief Justice. The petitioner is not entitled to urge them now. Only this much may be stated that we have examined the record of the petition filed at Lucknow and it is not borne out that the hearing of the case had started.

27. In a petition claiming writ of certio-rari the Court is not bound to interfere with the impugned order once it is satisfied that the order is pre-eminently just and fair. We have hereinabove ourselves examined the fairness of the order. Even if there was any deficiency in the order of the Acting Chief Justice as alleged by the petitioner, that will not be sufficient to quash the order in view of the findings recorded by us. Further, the petition deserves to be dismissed also on the ground that the petitioner tried to mislead this Court by filing false affidavit through Smt. Ali. However, we are not dismissing this petition on the ground of false affidavit filed on behalf of the petitioner.

28. We have observed hereinabove that we are not inclined to accept the petitioner's plea that the workers have spent Rs. 10,000/-in contesting the petition at Lucknow. We had stated that further reasons for this finding will be given later. The further reason is that the affidavit which contains the allegation of Rs. 10,000/- having been spent is also sworn by the same Smt. Ali who has been demonstrated to be an untruthful person.

29. We have stated hereinabove that large number of authorities were cited by the learned counsel for the petitioner. On the facts of the present case, reference to those authorities is not necessary as we have proceeded to examine the legality or validity of the Acting Chief Justice's order accepting the legal proposition canvassed by the learned counsel and contained in the said authorities. However, in deference to the learned counsel, we may only mention the said authorities.

(1)AIR 1967 SC 295 (paragraphs 27, 60 and 67), Barium Chemicals Ltd. v. Company Law Board;



(2) (1979) 2 SCC 491 : (AIR 1979 SC 49) (paragraphs 5 to 10), Smt. S. R. Venkat-raman v. Union of India and (1980) 2 SCC 471 : (AIR 1980SC319) (paragraph 9), State of Punjab v. Gurdial Singh were cited to substantiate the plea of malice.

30. (1981) 1 SCC 107 : (AIR 1980 SC 2147) (paragraph 63), Maru Ram v. Union of India and (1983) 1 SCC 305 : (AIR 1983 SC 130) (paragraphs 32,33 and 36), D. S. Nakara v. Union of India were cited in support of the plea of arbitrariness and the imperatives of sovereign socialist democratic republic.

31. (1981) 1 SCC 315 : (AIR 1980 SC 2181) (paragraph 5), Life Insurance Corporation of India v. D.J. Bahadur was cited for the proposition that a law is a tool to an engineer one of the components of which is a fair deal to the weaker human section like the working class.

32. AIR 1953 Nag 89 (FB), Bhai Lal Jagdish v. Addl. Dy. Commr., Akola; AIR 1964 SC 72 (paragraph 9), Pratap Singh v. State of Punjab; (1982) 1 SCC 271 : (AIR 1982 SC 710) (paragraphs 25 to 27), A. K. Roy v. Union of India; (1989) 2 SCC 505 (paragraphs 60 and 62): (AIR 1989 SC997, para 28), State of U. P. v. Maharaja Dharmendra Prasad Singh; (1989)-2SCC721 (746), Raipur Development Authority v. M/s. Chokhamal Contractors and (1989) 2 SCC 754 : (AIR 1989 SC 1933) (paragraph 11), Union of India v. Raghuvir Singh were relied upon for the scope of Courts' power of judicial review.

33. (1988) 4 SCC 54 : (AIR 1988 SC 1768), Aeltemesh Rein, Advocate v. Union of India was relied upon to indicate the manner of exercise of discretionary, power.

34. AIR 1976 SC 425 (paragraph 9), Rohtas Industries Ltd. v. Rohtas Industries Staff Union was relied upon to indicate the jurisdiction of the High Court under Art. 226 of the Constitution.

35. In view of the above, the petition lacks merit and is here by dismissed. However, there shall be no order as to costs. Interim order, is hereby discharged.

S.N. Sahay, J.

36. I agree that the writ petition is liable to be dismissed. I would, however, like to add few words of my own.

37. It has been held in Madan Mohan Saran v. Vidyadhar Govind Oak, 1974 All LJ 653 by a Division Bench of this Court that under the second proviso to Cl. 14 of the U. P. High Courts Amalgamation Order, 1948 the power to transfer of cases from Lucknow to Allahabad can be exercised by the Chief Justice either on the application of any of the parties to the litigation or on his own motion. It was also observed that generally cases are transferred suo motu for administrative reasons and in that context it was held that having regard to the wide ambit of the said proviso it seems fair to hold that the order of transfer passed by the Chief Justice under the second proviso to Cl. 14 is order of an administrative nature. In this connection a reference was also made to the Full Bench case of Ramesh Chandra Azad v. Regional Transport Authority Meerut, (Civil Miscellaneous Petition No. 83 of 1967 decided on 12-2-1969). It was observed in that case there is nothing in the second proviso to

Cl. 14 of the Amalgamation Order to indicate that the power conferred thereunder on the Chief Justice is to be exercised judicially or quasi-judicially and so the power is an administrative power.

38. When the power under the second proviso to Cl. 14 is exercised by the Chief Justice on the application of a party to litigation it will be necessarily a judicial order. The reason is that no order can be passed on the application of a party without giving opportunity of being heard to the other party and deciding the Us between the parties. The nature of the function performed in that case would imply that it is the duty of the Chief Justice to act judicially; and by applying the tests laid down in *State of Orissa v. Dr. (Miss) Binapani Dei*, AIR 1967 SC 1269 and a number of other cases the order passed by the Chief Justice would be a judicial order. Moreover the power has been held to be analogous to the power under S. 24, C.P.C. under which administrative as well as judicial order may be passed. If the order passed by the Chief Justice is held to be judicial order, perhaps writ petition may not lie. The Amalgamation Order was issued under S. 229 of the Government of India Act, 1935 which was the Constitution Act in force at that time (*Uma Ji v. Radhika Bai*, AIR 1986 SC 1272). The said order is supplemental to the provisions of Art. 225 of the Constitution of India, as it makes provisions regarding matters referred to in the said article. The provisions of the Amalgamation Order are in the nature of constitutional provisions which should be interpreted in a broad and liberal way and not in a pedantic manner. In the absence of any restrictive words it cannot be said that in no circumstance can a judicial order be passed and there is no reason why a judicial order cannot be passed by the Chief Justice when his jurisdiction is invoked under the second proviso to Cl. 14 by a party to the litigation.

39. I would not have hesitated to press the point of view that this case should be referred to Hon'ble Chief Justice for constituting a larger Bench to reconsider and make an authoritative pronouncement on the question whether or not a judicial order can be passed under the second proviso to Cl. 14 of the Amalgamation Order. However, I refrain from doing so for two reasons. First that Sri . V. B. Singh learned counsel for opposite party No. 2 on whose application the impugned order was passed by Hon'ble Acting Chief Justice did not press his contention that the impugned order is judicial order and made his submissions on the footing that it is an administrative order. Secondly, even if the impugned order is regarded as an administrative order it cannot be held to be vitiated. The reasons for taking such a view are elaborately given in the judgment of my learned brother. Suffice it to say that Hon'ble Acting Chief Justice who had jurisdiction to pass an order in his absolute discretion under second proviso to Cl. 14 passed the impugned order after hearing the parties he did not think it necessary to go into the question as to whether the controversy in the writ petition filed at Lucknow and the two writ petitions filed at Allahabad was exactly the same or not. But he held that even if it was possible to urge that the order dated 17-5-89 which is challenged in the Lucknow case is different from those which are the subject-matter in Allahabad the parties would be benefited by the disposal of the petitions at one place. The discretion, vested in the Chief Justice can obviously be exercised in the interest of due administration of justice and in this case the discretion was exercised by Hon'ble Acting Chief Justice in the interest of justice for transferring the Lucknow case to Allahabad for the above reason. I respectfully agree with my learned brother that the writ petition has no force and is liable to be dismissed.

39. Petition dismissed.