A INDER MANI AND ORS.

v.

MATHEHWARI PRASAD AND ORS.

OCTOBER 10, 1996

B [A.M. AHMADI, CJ. AND SUJATA V. MANOHAR, J.]

Judicial Discipline—High Court—Prerogative of Chief Justice to constitute Benches of his High Court—Duty of Puisne Judges to comply with directions given in this regard—Disregarding of such direction—Deprecated.

C

Respondent filed a writ petition in the High Court. The writ petition was listed before Mr. Justice A.P. Singh in Court No. 28. The order passed by him on 19.12.1995 stated that the case was passed over but as requested by the petitioner, it will be taken up on 21.12.1995. The writ petition was placed in that Court before the Single Judge on 21.12.1995 as an unlisted D **case. The Daily Cause List for 21.12.1995 did not list this writ petition before that Judge. The case was adjourned for 22.12.1995. On 22.12.1995 the Chief Justice of that High Court in the morning reconstituted the Division Bench presided over by Mr. Justice V.N. Khare with Mr. Justice A.P. Singh. In the Daily Cause List the constitution of this Division Bench** E **was shown as originally constituted. On such reconstitution, Justice A.P. Singh did not join the Division Bench. He sat singly in Court Room No. 28. He allowed that writ petition *ex parte* though the petition was not listed in the Daily Cause List of that date. This appeal had been filed against the judgment of the Single Judge.**

F

Allowing the appeal, this Court

HELD : It is the prerogative of the Chief Justice of the High Court to constitute Benches of his High Court and to allocate work to such Benches. Judicial discipline requires that the puisne Judges of the High G **Court comply with the directions given in this regard by their Chief Justice. In fact it is their duty to do so. Individual puisne Judges cannot pick and choose the matters they will hear or decide nor can they decide whether to sit singly or in a Division Bench. When the Chief Justice had constituted a Division Bench of Justice V.N. Khare and justice A.P. Singh,** H **it was incumbent upon Justice A.P. Singh to sit in a Division Bench with**

Justice V.N. Khare and dispose of the work assigned to this Division Bench. It was most improper on part of Justice A.P. Singh to disregard the administrative directions given by the Chief Justice of the High Court and to sit singly to take up matters that he thought he should take up. Even if he was originally shown as sitting singly on 22.12.1995, when the Bench was reconstituted and he was so informed, he was required to sit in a Division Bench on that day and was bound to carry out this direction. If there was any difficulty, it was his duty to go to the Chief Justice and explain the situation so that the Chief Justice could then give appropriate directions in that connection. But he could not have, on his own, disregarded the directions given by the Chief Justice and chosen to sit singly. This behaviour which totally undermines judicial discipline and proper functioning of the High Court is deprecated. [403-E-H, 404-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 12982 of 1996.

From the Judgment of and Order dated 22.12.95 of the Allahabad High Court in C.M.W. No. 7013 of 1980.

R.D. Upadhyay for the Appellants.

D.K. Garg and M.C. Dhingra for the Respondents.

The Judgment of the Court was delivered by

MRS. SUJATA V. MANOHAR, J. Leave granted.

This appeal by special leave arises from a judgment of the learned Single Judge of the Allahabad High Court dated 22.12.1995 in Civil Misc. Writ Petition No. 7013 of 1980. By the said judgment the learned Single Judge has allowed the writ petition filed by the first respondent *ex parte*. On 22.12.1995, the learned advocate who appeared for the appellants had made an application supported by affidavit dated 22.12.1995 asking for an adjournment for reasons stated in the affidavit. This application was not granted. The learned advocate thereafter did not appear in the case and the impugned judgment has been passed *ex parte*. In view of certain averments made in the special leave petition relating to what transpired in the Court of the learned Single Judge on 19.12.1995, 21.12.1995 and

A 22.12.1995 we directed the registrar of the Allahabad High Court to place before us a status report in this behalf so that we could appreciate and deal with the averments. The Registrar of the Allahabad high Court has filed an affidavit before us along with the daily cause lists for 19.12.1995, 21.12.1995 and 22.12.1995 as also the order-sheets relating to the said writ B petition.

On 19.12.1995 the writ petition was listed before Hon'ble Mr. Justice A.P. Singh in Court No. 28. The order passed by him on 19th of December, 1995 is to the effect that an illness slip has been received from counsel for the appellants (respondents before the High Court) although there are C other counsel also listed as representing the appellants. It goes on to say : "the case is passed over but as requested by the learned counsel for the petitioners, it will be taken up on 21.12.1995 on which date it shall not be adjourned on any ground. Learned counsel for the petitioners may inform the learned counsel for the respondents that the case will be taken up on D 21.12.1995."

In view of this order, the writ petition was placed in Court No. 28 before the learned Single Judge on 21.12.1995 as an unlisted case. The Daily Cause List for 21.12.1995 does not list this writ petition before the learned Judge. The order passed on 21.12.1995 by the learned Single Judge E is as follows :

> "Shri Lalji Pandey learned counsel for the respondents has stated that he is not aware of the fact that the case is posted for today. He prays that the case may be put up tomorrow so that he may F prepare the case. Put up tomorrow (22.12.1995) at 10.00 a.m."

It is the case of learned advocate for the appellants that as he came out of the court on 21.12.1995 he was threatened by an unknown person and told not to appear in the case. He claims to have mentioned this to the learned Single Judge on the same day. He also claims to have men- G tioned this incident before the Hon'ble the Chief Justice of the Allahabad High Court. However, there is no material on record on the action taken, if any.

On 22.12.1995 the Chief Justice of the Allahabad High Court in the H morning reconstituted the Division Bench presided over by Mr. Justice

V.N. Khare (as he then was) with Mr. Justice A.P. Singh. In the Daily Cause List the constitution of this Division Bench was shown as originally constituted i.e. Hon'ble Mr. Justice V.N. Khare and Hon'ble Mr. Justice Syed Rafat Alam. The Chief Justice assigned other work of Court Room No. 36 to Justice Rafat Alam when he reconstituted the Division Bench. On such reconstitution both the learned judges were informed about the arrangements made by Hon'ble the Chief Justice. However, Justice A.P. Singh did not sit on the Division Bench with Justice V.N. Khare. When Justice A.P. Singh did not join the Division Bench, the Hon'ble the Chief Justice was apprised of the situation. He thereupon directed that Justice Aloke Chakrabarti be requested to join Justice V.N. Khare and the Division Bench was constituted accordingly. Mr. Justice A.P. Singh sat singly in Court Room No. 28. In the Daily Cause List of the learned Judge for 22.12.1995 also the said writ petition was not listed. He heard the aforesaid writ petition, which was allowed by him by his judgment and order dated 22.12.1995.

The Registrar's affidavit discloses a somewhat alarming situation. It is the prerogative of the Chief Justice to constitute Benches of his High Court and to allocate work to such Benches. Judicial discipline requires that the puisne Judges of the High Court comply with the directions given in this regard by their Chief Justice. In fact it is their duty to do so. Individual puisne Judges cannot pick and choose the matters they will hear or decide nor can they decide whether to sit singly or in a Division Bench. When the Chief Justice had constituted a Division Bench of Justice V.N. Khare and the learned Judge, it was incumbent upon the learned Judge to sit in a Division Bench with Justice V.N Khare and dispose of the work assigned to this Division Bench. It was most improper on his part to disregard the administrative directions given by the Chief Justice of the High Court and to sit singly to take up matters that he thought he should take up. Even if he was originally shown as sitting singly on 22.12.1995, when the Bench was reconstituted and he was so informed, he was required to sit in a Division Bench on that day and was bound to carry out this direction. If there was any difficulty, it was his duty to go the Chief Justice and explain the situation so that the Chief Justice could then give appropriate directions in that connection. But he could not have, on his own, disregarded the directions given by the Chief

A Justice and chosen to sit singly. We deprecate this behaviour which totally undermines judicial discipline and proper functioning of the High Court.

Looking to these regrettable circumstances in which the impugned order came to be passed *ex parte* by the learned Single Judge, we set aside the impugned order and remit the matter to the High Court for decision B on merit in accordance with law. The matter may be placed before another learned Single Judge by the Hon'ble Chief Justice.

The appeal is disposed of accordingly with no order as to costs.

R.A. Appeal disposed of.