

Chief Justice's Court

Case :- MATTERS UNDER ARTICLE 227 No. - 3341 of 2017

Petitioner :- Anjuman Intazamia Masazid Varanasi

Respondent :- Ist A.D.J. Varanasi And Others

Counsel for Petitioner :- S.F.A. Naqvi, learned Senior Advocate, Puneet Kumar Gupta, Syed Ahmed Faizan.

Counsel for Respondent :- Ajay Kumar Singh, Vijai Shankar Rastogi, M.C. Chaturvedi, learned AAG, Kunal Ravi Singh, CSC, Vijay Shanker Mishra, CSC-VI, Hare Ram Tripathi, SC, Sri Ankit Gaur, SC, Vineet Sankalp, SC, Shashi Prakash Singh, ASGI, Manoj Kumar Singh, Ved Mani Tiwari and Sudarshan Singh, learned CGCs.

CONNECTED WITH

Matters Under Article 227 Nos. 3562 of 2021, 1521 of 2020, 234 of 2021 and 3844 of 2021.

Hon'ble Pritinker Diwaker, Chief Justice

1. At the outset when these cases are called out, an objection is raised on behalf of the petitioners questioning the propriety on part of this Court to proceed with the hearing of the cases. Factual backdrop in which the objection is raised are somewhat peculiar and requires narration in order to effectively deal with the submission raised at the Bar.

2. It is urged on behalf of the petitioners that a Learned Single Judge has already heard the matter on approximately 75 dates and thereafter reserved the judgment on 25.7.2023, fixing today i.e. 28.08.2023 as the date for delivery of judgment. The argument is that the cases ought not to have been withdrawn from the concerned court, on administrative side, by the Chief Justice, for being heard all over again. It is submitted that the course adopted on the administrative side is against propriety and, therefore, liable to be withdrawn with further directions issued for the cases to be placed before the same bench which had concluded the hearing on 25.07.2023.

3. It is good that the issue of propriety is raised as it is the duty of the Court to ensure that the proceedings before it are insulated from any

procedural aberration. Judicial proceedings must remain solemn so as to command faith of the citizenry.

4. Record reveals that the cases were heard on 18.01.2021 by the Court which had the jurisdiction as per the roster assigned by the Chief Justice. After the cases were heard on several dates the proceedings were concluded and judgment was reserved in the matter on 15.03.2021. The judgment, however, was not delivered in the matter. The cases nevertheless continued to be listed before the same court even after the concerned learned Single Judge ceased to have jurisdiction in the matter as per roster.

5. It would be worth noticing that an administrative order of the then Chief Justice dated 16.12.2013 regulates the listing of cases before the learned Judges, as per the roster. The administrative order dated 16.12.2013 reads as under:-

"No pending case, civil or criminal, shall be treated as part-heard or tied up in a Court after the commencement of a new roster. All pending cases shall be listed before the appropriate Bench dealing with such matters in accordance with the fresh roster, unless so ordered by the Chief Justice in a specific case hereafter.

16.12.2013"

6. The aforesaid administrative order dated 16.12.2013 fell for examination by a Full Bench of this Court in Criminal Appeal No.4922 of 2006 (**Amar Singh vs. State of U.P.**), wherein the Larger Bench held as under:-

"It is for this reason that the Chief Justice under the administrative order dated 16 December 2013 had directed that the no case shall be treated as tied up or part-heard after the commencement of new roster except when so ordered by the Chief Justice in a specific case hereafter. The circular of the Chief Justice dated 16 December 2013 has to be read in a manner that it is in conformity with the Rules, 1952 of the Court.

In our opinion the circular of the Chief Justice only intends to provide that the Registry on its own will not list a

matter before a particular Bench after the change of roster on the pretext that it is a tied up or part-heard matter. Only such cases are to be listed before a particular Bench under the category of 'tied up cases', as may be ordered by the Chief Justice after the change of roster.

The purpose is obvious. The Chief Justice can examine as to whether the order made by the Bench concerned for treating the matter as tied up or part-heard or for listing of the matter before the same Bench, is in conformity with the Rules or in conflict thereof as has been noticed in Sanjay Kumar Srivastava (supra) and in Sanjay Mohan (supra).

Initially the counsel for the Allahabad High Court did suggest that the rational behind the circular was to see that the special Benches are not required to be constituted for hearing tied up matters so as to save judicial time. Delay in disposal of the matters is avoided by placing the matter before a Bench which is readily available as per the changed roster. The order dated 16 December 2013 only clarifies the confusion which may arise in respect of listing of the matters before the Court concerned.

We are in agreement with the rational so suggested by the counsel for the High Court but at the same time as noticed above, the circular has to be read in conformity with the statutory rules.

We are, therefore, of the opinion that the order dated 16 December 2013 has to be read in a manner to suggest that in all matters where there are judicial orders for the matter being treated as part-heard or orders for listing of the matters for further hearing before a particular Judge/Bench, the Registry shall not on its own list the matter before the same Judge/Bench but would place the records of the case before the Chief Justice so that the Chief Justice can examine as to whether the order made by the Judge/Bench for the case being treated as tied up or part-heard, is in conformity with the Rules or not. The Chief Justice may, thereafter, issue appropriate orders for the listing of the matter before the appropriate Bench.

We may record that even if the case is found to be tied up or part-heard by the Chief Justice within the meaning of Rule 14 of Chapter V of Rules, 1952, the Chief Justice can issue orders for the matter to be listed before another Bench for good and valid reasons. This power of the Chief Justice has been recognized by the Supreme Court in State of Rajasthan vs. Prakash Chand (supra) and paragraph 10 is reproduced below :

"10. A careful reading of the aforesaid provisions of the Ordinance and Rule 54 shows that the

administrative control of the High court vests in the Chief Justice of the High Court alone and that it is his prerogative to distribute business of the High Court both judicial and administrative. He alone, has the right and power to decide how the Benches of the High Court are to be constituted: which Judge is to sit alone and and which cases he can and is required to hear as also as to which Judges shall constitute a Division Bench and what work those Benches shall do. In other words such work only as may be allotted to them by an order of or in accordance with the directions of the Chief Justice. That necessarily means that it is not within the competence or domain of any Single or Division Bench of the Court to give any direction to the Registry in that behalf which will run contrary to the directions of the Chief Justice. Therefore in the scheme of things judicial discipline demands that in the event a Single Judge or a Division Bench considers that a particular case requires to be listed before it for valid reasons, it should direct the Registry to obtain appropriate orders from the Chief Justice. The puisne Judges are not expected to entertain any request from the advocates of the parties for listing of case which does not strictly fall within the determined roster. In such cases, it is appropriate to direct the counsel to make a mention before the Chief Justice and obtain appropriate orders. This is essential for smooth functioning of the Court. Though, on the judicial side the Chief Justice is only the 'first amongst the equals' on the administrative side in the matter of constitution of Benches and making of roster, he alone is vested with the necessary powers. That the power to make roster exclusively vests in the Chief Justice and that a daily cause-list is to be prepared under the directions of the Chief Justice as is borne out from Rule 73, which reads thus :..."

The above said judgment has been approved by the Supreme Court in *Kishore Samrite (supra)*. It is also worthwhile to refer to the judgment of the Supreme Court in ***High Court of Andhra Pradesh vs. Special Deputy Collector (L.A.), Andhra Pradesh and others*** reported in (2007) 13 SCC, 580 wherein paragraph 6 it has been held as follows :

"6.....At this juncture, it is to be noted that where the matter is heard in part, normally it should not be transferred to another Bench or learned Single Judge. But it has come to notice in

several instances that cases have been noted to be part-heard even when it was really not so. Such practice is to be discouraged. The Chief Justice of the High Court has power even to transfer a part-heard case from one Bench to another or from one learned Single Judge to another. But this should be done in exceptional cases for special reasons."

7. The administrative order of the Chief Justice, dated 16.12.2013, as interpreted by the Full Bench of this Court in **Amar Singh** (supra) required the present bunch of cases to be placed before the Chief Justice for the cases to be nominated to the concerned court so as to vest jurisdiction in the court concerned to proceed with the hearing of cases after the concerned learned Judge had ceased to have jurisdiction in the matter.

8. Notwithstanding the above requirement in law the learned Single Judge continued with the hearing of cases, though he had no jurisdiction to hear them as per the roster. No nomination was otherwise obtained from the Chief Justice in terms of the administrative order dated 16.12.2013. The records of present bunch of cases were not even placed before the Chief Justice for necessary orders in terms of the judgement of this Court in **Amar Singh** (supra). Learned Single Judge, however, continued with the hearing of these cases for more than two years even though he had no jurisdiction in the matter as per the roster.

9. Jurisdictional impropriety, noticed above, would have gone undetected, but for a complaint made on the administrative side before the Chief Justice, on 27.7.2023, by the counsel appearing for one of the parties to the proceedings which highlighted the fact that hearing is proceeding in these cases in derogation of the procedure laid down in law for listing of the cases as per the rules. The contents of the complaint made on the administrative side on 27.7.2023 are extracted hereinafter:-

"Sir,

This application is being filed for reallocation of Writ Petition under Article 227 No.3562/2021, 3341/2017, 3844 of

2021, 234 of 2021, 1521 of 2020 titled as U.P. Sunni Central Waqf Board vs Ancient Idol of Swayambhu Lord Vishweshwar and Others tied up to **Hon'ble Mr. Justice Prakash Padia** to appropriate bench as Justice Padia has failed to deliver judgement after reserving the same within a period of 6 months.

Sir, the hearing in this matter was held in the court of Hon'ble Mr. Justice Prakash Padia starting from 18.1.2021 upto 15.3.2021.

After 35 hearings the matter was reserved by Hon'ble Mr. Justice Prakash Padia on 15.3.2021 for the first time.

The judgment could not be delivered and judgment was reserved for 7 months.

The matter was again directed to be listed along with other writ petitions with leading case 3562/2021 vide order 8.10.2021.

2nd REHEARING

The case was heard from 10.11.2021 upto 28.11.2022 i.e. on 10 dates and judgment was reserved on 28.11.2022 in W.P. No.3562/2021 and other connected matters.

In the mean time the Apex Court passed an order in case of **Umesh Rai vs State of U.P.** on 15.05.2023 directing that if judgment is not delivered within 6 months the same has to be listed before a different bench.

The deadline was expiring before Hon'ble Mr. Justice Prakash Padia on 28.05.2023. The case was listed on 24.05.2023 and Hon'ble Mr. Justice Prakash Padia directed to list the matter for rehearing on 26.05.2023.

3rd REHEARING

The case has been again heard on 25.07.2023 and judgment has been reserved .

It is relevant to mention that the case of **Anil Rai vs State of Bihar 2001 7 SCC pg 318** has been reiterated in case of **Umesh Rai vs State of U.P. reported in 2023 Live Law SC 448** it has been held that judgment must be pronounced within a period of six months failing which the matter should be placed before another bench for fresh arguments. Copy of case of Umesh Rai vs State of U.P. reported in 2023 Live Law SC 448 is attached herewith.

The judgement has been reserved in this case thrice and the order of the Apex Court has been violated blatantly.

Therefore, it is requested to list the matter before another bench.”

10. On the matter being placed before the Chief Justice on the administrative side, a report was called from the office as it was expected for the registry to have placed this matter before the Chief Justice for passing appropriate orders in terms of the administrative order dated 16.12.2013 and the Full Bench judgment of this Court in **Amar Singh** (supra).

11. The report submitted by the registry states that the leading file alongwith connected matters were listed before the learned Single Judge on 09.08.2021 when a direction was issued to list the cases on 11.08.2021. On 11.08.2021 the matter was directed to be listed for further hearing on 17.08.2021. As per the roster notified on 22.11.2021 and subsequent rosters notified by the Chief Justice, from time to time (except last two rosters, i.e. w.e.f. 13.3.2023 and 3.7.2023), these cases could not have been listed before the learned Single Judge without obtaining appropriate nomination from the Chief Justice. The registry has further clarified that the records of these cases were never sent to the parent section in the registry for the procedures to be followed for listing of the cases in terms of the applicable orders, both on the administrative side and the judicial side.

12. The registry has further reported that all records of leading file alongwith connected cases remained in the chambers of the learned Judge and the cases were listed on the instructions of Bench Secretary and the officials attached to His Lordship's chambers. As per the registry the parent section responsible for listing of the cases before the Court had no access to the records of the cases as the files were never sent to the registry. Relevant portion of the report of registry is reproduced hereinafter:-

“....

On the basis of above reports, it transpires that from January, 2021, leading file of the Matter under Article 227 No.3562/2021 has been listed before Hon'ble Court on different dates along with Matter under Article 227

No.3341/2017 (Anjuman Intazamia Masazid Varanasi Vs. Ist A.D.J. Varanasi and others), Matters under Article 227 No.3844 of 2021 (Anjuman Intazamia Masazid Varanasi Vs. Ancient Idol of Swayambhu Lord Vishweshwar and 5 others), Matter under Article 227 No.234 of 2021 (U.P. Sunni Central Board of Waqfs Lucknow Vs. Ist A.D.J., Varanasi and others) and Matters under Article 227 No.1521 of 2020 (Anjuman Intazamia Masazid Varanasi Vs. Ancient Idol of Swayambhu Lord Vishweshwar and 5 others), which were connected by Hon'ble Court on different dates.

As far as the tied up/part heard of the matters is concerned, on 09.08.2021 the leading file along with connected matters had been listed before Hon'ble Court (Hon'ble Mr. Justice Prakash Padia). In compliance of Hon'ble Court's order dated 09.08.2021, the said case with connected matters had been listed on 11.08.2021 before Hon'ble Mr. Justice Prakash Padia and on the same day i.e. 11.08.2021, Hon'ble Court had been pleased to pass the order to put up in additional cause list for further hearing on 17.08.2021 along with 1 matters under Article 227 No.3844 of 2021 and matters under Article 227 No.1521 of 2020 and other connected matters.

Thereafter, new roster came into effect from 6th of September, 2021. Since then, Constitution of Benches (Roster) at Allahabad has changed a number of times.

... ..

The office in its report has stated that leading file along with other connected matters had been placed before Hon'ble Court on 09.08.2021. Since then, records of matters were not consigned to the parent Section for further compliance of order of Hon'ble Court, passed in the said matters. All records of leading file, including connected matters, remained in the Chambers of Hon'ble Court concerned. The matters have been listed before Hon'ble Court from the end of Chambers of concerned Hon'ble Court as well as the end of Ld. Bench Secretary, attached with the Hon'ble Court. The matters/connected matters were reserved for judgment firstly on 12.03.2021. The case was last listed on 25.07.2023 before Hon'ble Court No. 4 (Hon'ble Mr. Justice Prakash Padia) and the Hon'ble Court has again reserved the judgment and fixed the date **for delivery of judgment on 28.08.2023.**

... ..”

13. It is in the above backdrop that the issue got examined at the level of the Chief Justice on the administrative side and a decision has been

taken on 11.08.2023 for the cases to be withdrawn from the learned Single Judge for a fresh nomination.

14. It is apt to note that procedural observance in the matter of disposal of cases subserve a larger public interest of ensuring faith in the justice dispensation system and cannot be viewed lightly. Under the rules of the Court every learned Judge is expected to decide cases which are listed before them as per the roster fixed by the Chief Justice or as per the orders of the Chief Justice passed on the administrative side in terms of the law laid down in the case of **Amar Singh** (supra).

15. Delay reported in delivery of judgments has otherwise been viewed with concern by the Supreme Court and necessary guidelines have been issued for pronouncement of judgment in the case of **Anil Rai vs. State of Bihar**, (2001) 7 SCC 318, which are reproduced hereinafter:-

“(i) The Chief Justice of the High Courts may issue appropriate directions to the Registry that in a case where the judgment is reserved and is pronounced later, a column be added in the judgment where, on the first page, after the cause-title date of reserving the judgment and date of pronouncing it be separately mentioned by the court officer concerned.

(ii) That Chief Justices of the High Courts, on their administrative side, should direct the Court Officers/ Readers of the various Benches in the High Courts to furnish every month the list of cases in the matters where the judgments reserved are not pronounced within the period of that month.

(iii) On noticing that after conclusion of the arguments the judgment is not pronounced within a period of two months the Chief Justice concerned shall draw the attention of the Bench concerned to the pending matter. The Chief Justice may also see the desirability of circulating the statement of such cases in which the judgments have not been pronounced within a period of six weeks from the date of conclusion of the arguments amongst the Judges of the High Court for their information. Such communication be conveyed as confidential and in a sealed cover.

(iv) Where a judgment is not pronounced within three months from the date of reserving it, any of the parties in the case is permitted to file an application in the High Court with a prayer for early judgment. Such application, as and when

filed, shall be listed before the Bench concerned within two days excluding the intervening holidays.

(v) If the judgment, for any reason, is not pronounced within a period of six months, any of the parties of the said lis shall be entitled to move an application before the Chief Justice of the High Court with a prayer to withdraw the said case and to make it over to any other Bench for fresh arguments. It is open to the Chief Justice to grant the said prayer or to pass any other order as he deems fit in the circumstances.”

16. The law laid down in **Anil Rai** (supra) came to be reiterated recently by the Supreme Court in the case of **Umesh Rai @ Gora Rai vs. State of U.P.** being Criminal Appeal No.1518 of 2023, wherein the Supreme Court did not approve the nomination of case to the same bench, by the Chief Justice, for hearing which had not delivered the judgment for more than six months. Though the concerned bench had fixed 19.05.2023 for delivery of judgment, yet the Supreme Court directed the matter to be assigned to another bench. The direction of the Supreme Court contained in its judgment dated 15.05.2023 is reproduced:-

“We are of the view that thereafter the matter was required to be handed over to another Bench, more so, in the manner it has proceeded even thereafter, simply being assigned to the same Bench and thereafter being concluded on that date by the same Bench.

We thus, cannot appreciate the reassigning of the matter to the same Bench and we direct that the matter be assigned by Hon’ble Chief Justice to another Bench keeping in mind the ratio in Anil Rai (supra). Thus, there is no question of pronouncement of judgment now by the same Bench on 19.05.2023.”

17. Facts of this case pose a more troubled scenario of procedural aberration. The non observance of procedure in listing of the cases, passing of successive orders for reserving the judgment and again listing the cases before the learned Judge for hearing, though he no longer had jurisdiction in the matter as per the roster, under the directions received from the chamber of learned Judge, without allowing the parent section in the office to have access to the records of these cases are instances of non

observance of procedure settled for listing and hearing of cases. It is this concern of propriety which has compelled the Chief Justice to pass following orders on the administrative side on 11.08.2023:-

“The issue involved in the present complaint relates to the listing and status of Matters Under Article 227 No.3562 of 2021 (U.P. Sunni Central Board vs. Ancient Idol of Swayambhu Lord Visheshwar and five others) along with connected matters i.e. Matters Under Article 227 No. 3341 of 2017 (Anjuman Intazamia Masazid Varanasi vs. Ist ADJ, Varanasi and others), Matters Under Article 227 No.3844 of 2021 (Anjuman Intazamia Masazid Varanasi vs. Ancient Idol of Swayambhu Lord Vishweshwar and 5 others), Matters Under Article 227 No.234 of 2021 (U.P. Sunni Central Board of Waqfs Lucknow vs. Ist ADJ, Varanasi and others) and Matters under Article 227 No. 1521 of 2020 (Anjuman Intazamia Masazid Varanasi vs. Ancient Idol of Swayambhu Lord Vishweshwar and 5 others) from January, 2021 till date.

As per the office report, the aforesaid cases were firstly listed on 18.1.2021 before the Bench having jurisdiction at that point of time and thereafter when the cases were listed on 12.3.2021, the judgement was reserved. Thereafter, with the change of roster, as per the scheme of this Court, these cases were to be listed before the Bench having jurisdiction over such cases at the particular time, but unfortunately those were marked tied up and part heard before the same Bench, where it was listed on 12.3.2021.

Having considered the seriousness of the allegation made in the aforesaid complaint; the facts of the present case; the administrative order dated 16.12.2013 passed by the then Chief Justice as well as the law laid down by a Full Bench of this Court in the case of Amar Singh vs. State of U.P. (Criminal Appeal No. 4922 of 2006- decided on 28.7.2015 and by the Supreme Court in the case of Umesh Rai @ Gora Rai vs. State of U.P. (Criminal Appeal No.1518 of 2023) [@ SLP (Crl) No.6088 of 2023], I am of the opinion that it would be in the interest of judicial propriety and judicial discipline as well as the transparency in the listing of cases, to withdraw the aforesaid cases from the Bench (Prakash Padia, J) wherein the judgement is reserved and to nominate afresh.

Ordered accordingly.

Registry to make compliance forthwith.

CHIEF JUSTICE

11.08.2023”

18. Thereafter, on 25.8.2023, this bunch of petitions came to be nominated to the present Bench (Chief Justice). The administrative order of the date reads as under:

“Be placed before CJ (Single Bench) on 28.8.2023.

CHIEF JUSTICE

25.08.2023”

19. For the reasons enumerated above, the objection raised to the proceedings on behalf of the petitioners is consigned to records.

20. List the matter on 12.9.2023 for hearing.

Order Date :- 28.8.2023

RK

(Pritinker Diwaker, CJ)