

A.F.R.

Case :- CRIMINAL APPEAL No. - 4922 of 2006

Appellant :- Amar Singh

Respondent :- State Of U.P.

Counsel for Appellant :- Kamal Krishna, Anubhav Trivedi, Dilip Kumar, M.D. Singh Shekhar, R.M.Singh, R.N.Pandey, Rajarshi Gupta, Rajeev Gupta, Rakesh Panday, Ravindra Sharma, Satish Trivedi, Shashi Nandan, Suresh Singh, Sushil Kumar Dwivedi, V.S.Chaudhary

Counsel for Respondent :- Govt. Advocate, A.G.A., A.K. Srivastava, Narendra Kr.Singh Yadav, Vishnu Pratap

Hon'ble V.K. Shukla, J.
Hon'ble Arun Tandon, J.
Hon'ble Dilip Gupta, J.
Hon'ble Pradeep Kumar Singh Baghel, J.
Hon'ble Manoj Kumar Gupta, J.

(DELIVERED BY ARUN TANDON, J.)

The Hon'ble The Chief Justice while notifying the roster (allocation of work to The Hon'ble Judges) vide orders dated 16 December 2013 and dated 23 December 2014 directed as follows :

ORDER

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

ORDER

The administrative order dated 16th December, 2013 regard part heard and tied up cases will continue in operation."

23.12.2014

A Full Bench of the High Court of Judicature at Allahabad (A bench of three Hon'ble Judges) in the case of Smt. Chawali vs. State of U.P. and others [Writ Petition (Misc. Bench) No. 9470 of 2014] decided on 16 January 2015 by majority judgment, while dealing with the said orders, in paragraph 79 and 80 held as follows :

"79. In view of above, part-heard and tied up cases should be listed before the same Bench for disposal. Listing of

part-heard and tied-up cases to other Bench is an exception. Accordingly, in case Hon'ble The Chief Justice is of the opinion that a particular cases is to be listed before other Bench for fresh hearing, then necessarily, it implies that part-heard and tied-up matter to other Bench is an exception which requires separate order. Hence by general (sweeping) order or circular while changing the roaster, it is not permissible to release all part-heard cases by the Chief Justice, without applying mind to individual cases.

WITHDRAWAL OF CASES

80. *Withdrawal of a case may be for variety of reasons which may be administrative or otherwise on complaint against the Judge concerned or for some other reasons. After withdrawing a petition/case, Chief Justice may refer to other Bench or nominate a particular Bench. Nomination of a petition/case to other Judge/Bench also depends upon a variety of factors keeping in view the ability, competency or knowledge of a particular Judge. **Once a case is nominated to a particular Judge, then it does not appear that it may be denominated or go to other regular Bench with the change of roster. Nominated case may be withdrawn or be listed to other Bench or regular Bench only in case Chief Justice passes some order withdrawing the same followed by nomination to other Bench competent to adjudicate the controversy in accordance with rules of the Court. In absence of fresh nomination, it shall not be open for the registry to withdraw and send it to other Bench with the change of roster.***

Exercise of power with regard to allocation of work at regular interval for the purpose of change of roster stands on different footing than the power exercised by Chief Justice to withdraw a particular case from a particular Bench or nomination to other Bench."

It is because of the said directions of the Full Bench that Criminal Appeal No. 4922 of 2006 was listed before a Division Bench for hearing on 03 February 2015 although as per the changed roster enforced from 05 January 2015 by the The Chief Justice, the Division Bench was not assigned the jurisdiction to hear the criminal appeals.

The Registry of the High Court placed the Criminal Appeal before the Division Bench because of the earlier nomination order dated 15 November 2014 made by the Hon'ble The Chief Justice for listing of the appeal before the Bench presided over by one of the Hon'ble Judge named therein.

The Division Bench, finding it difficult to agree with the reasoning and the conclusions drawn in the majority judgment in Smt. Chawali (supra) regarding the impact of the orders/circulars of The Chief Justice, referred to above, deemed it fit to refer the following

seven questions for consideration by a Larger Bench vide order dated 03 February 2015 :

(a) Whether the Full Bench in the case of Smt. Chawali (supra) could have proceeded to examine the legality/enforceability of the circular issued by Hon'ble The Chief Justice dated 16.12.2013 specifically in the circumstances when no issue was framed in that regard by the Full Bench and it had not been addressed upon by any of the counsel present before the Full Bench in the case of Smt. Chawali (supra).

(b) Whether general direction to list and tied up cases irrespective of the circulars of Hon'ble the Chief Justice dated 16.12.2013 could be issued to the Registry by the Full Bench without affording opportunity to the High Court to have its say in the matter.

(c) Whether the majority opinion of the Full Bench in the case of Smt. Chawali (supra) on the issue is bad for non-consideration of the law laid down by earlier Full Bench in the case of Sanjay Kumar Srivastava (supra).

(d) What meaning is to be attached to the words "tied up cases" in light of Rule 14 to which the circulars dated 16.12.2013 may not apply and that there may be a requirement of separate order from Hon'ble The Chief Justice after application of mind for being listing before another Bench.

(e) Whether the nominated cases must be listed before the same Bench even after there has been a change of roster.

(f) At what stage the assignment of fresh cases to a particular Bench comes to an end.

(g) Whether nomination in the name of the Senior Member of the Bench would suffice or there should be a nomination with the name of all the judges constituting the Bench, in matters is to be heard by more than one Judge.

The Chief Justice vide order dated 10 February 2015 constituted this Bench for answering the referred questions.

We have heard Shri Rajrshi Gupta, Advocate on behalf of the appellant, Shri Shashi Nandan, Senior Advocate, Shri M.D.Singh Shekhar, Senior Advocate, Shri Vishnu Bihari Tiwari, Advocate and Shri Rakesh Pandey, President High Court Bar Association as friends of the Court. Shri Vijay Bahadur Singh, Advocate General appeared on behalf of the State of U.P., while Shri Ravi Kant, Senior Advocate assisted by Shri Manish Goyal, Advocate appeared on behalf of the Allahabad High Court.

All the counsel who assisted the Bench were unanimous on at

least one issue namely the power of the Chief Justice in the matter of constitution of Benches and allocation of cases/work to the Benches so constituted as also on the issue that a puisne Judge/Judges can do such work as is allotted to Judge/Judges by the Chief Justice or under the directions of the Chief Justice and not beyond it.

As a matter of fact such an administrative control of the Chief Justice in the matter of allocation of work to the puisne judge is well settled under the judgment of the Supreme Court in **State of Rajasthan vs. Prakash Chand And Others** reported in (1998) 1 SCC, 1. In paragraph 59 of the judgment, the Supreme Court held :

“59. From the preceding discussion the following broad CONCLUSIONS emerge. This, of course, is not to be treated as a summary of our judgment and the conclusions should be read with the text of the judgment:

(1) That the administrative control of the High Court vests in the Chief Justice alone. On the judicial side, however, he is only the first amongst the equals.

(2) That the Chief Justice is master of the roster. He alone has the prerogative to constitute benches of the court and allocate cases to the benches so constituted.

(3) That the puisne Judges can only do that work as is allotted to them by the Chief Justice or under his directions.

(4) That till any determination made by the Chief Justice lasts, no Judge who is to sit singly can sit in a Division Bench and no Division Bench can be split up by the Judges constituting the bench themselves and one or both the Judges constituting such bench sit singly and take up any other kind of judicial business not otherwise assigned to them by or under the directions of the Chief Justice.

(5) That the Chief Justice can take cognizance of an application laid before him under Rule 55 (supra) and refer a cases to the larger bench for its disposal and he can exercise this jurisdiction even in relation to a part-heard case.

(6) That the puisne Judges cannot “pick and choose” any case pending in the High Court and assign the same to himself or themselves for disposal without appropriate orders of the Chief Justice.

(7) That no Judge or Judges can give directions to the Registry for listing any case before him or them which runs counter to the directions given by the Chief Justice.

(8)

(9)

.....

.....

.....”

The judgment in State of Rajasthan vs. Prakash Chand (Supra) has been reiterated with approval in paragraphs 26 and 27 of the judgment of the Supreme Court in **Kishore Samrite vs. State of Uttar Pradesh and others** reported in **(2013) 2 SCC, 398** and in paragraph 29 the Supreme Court held as follows :

“29. Judicial discipline and propriety are the two significant facets of administration of justice. Every court is obliged to adhere to these principles to ensure hierarchical discipline on the one hand and proper dispensation of justice on the other. Settled canons of law prescribe adherence to the rule of law with due regard to the prescribed procedures. Violation thereof may not always result in invalidation of the judicial discretion. Where extraordinary jurisdiction, like the writ jurisdiction, is very vast in its scope and magnitude, there it imposes a greater obligation upon the courts to observe due caution while exercising such powers. This is to ensure that the principles of natural justice are not violated and there is no occasion of impertinent exercise of judicial discretion.”

We may at the very outset record that the Rajasthan High Court rules which were subject matter of consideration in the case of State of Rajasthan vs. Prakash Chand (Supra) are *para materia* to the Allahabad High Court Rules, 1952 (hereinafter referred to as the **Rules, 1952**). Therefore, what has been observed by the Supreme Court in State of Rajasthan vs. Prakash Chand (Supra) would apply with full force in respect of Rules, 1952.

In our opinion the notification of the roster has twin purpose :

(a) it provides for the category of cases jurisdiction-wise to be heard by a Judge/Division Bench and;

(b) it also directs the Registry of the High Court to ensure that the cases of the assigned jurisdiction are listed before a particular Judge/Division Bench only.

It, therefore, acts as a controlling direction in the matter of listing of cases before various Judges/Benches.

It is in the aforesaid legal background we propose to examine the issues involved.

The administrative powers to be exercised by Hon'ble The Chief Justice in the matter of framing of the roster and in the matter of listing

of cases is regulated by the Rules, 1952 framed in exercise of powers conferred under Article 225 of the Constitution of India.

For answering the seven questions which have been referred to the Larger Bench, it is worthwhile to refer to, Rules 1, 7, 12, 13, 14 and 15 of Chapter V and Rule 7 of Chapter VI of the Rules, 1952 which read as follows:

“Chapter V:-- JURISDICTION OF JUDGES SITTING ALONE OR IN DIVISION COURTS :--

(1) Constitution of Benches :--Judges shall sit alone or in such Division Courts as may be constituted from time to time and do such work as may be allotted to them by order of the Chief Justice or in accordance with his directions.

(7) Contempt in facie curiae :-- Where a contempt as contemplated by Section 345 of the Code of Criminal Procedure, 1973 is committed before the Court, the Judge or judges before whom such contempt is committed may take cognizance of the offence and deal with the offender under the provisions of that Code and subsequent sections of that Code.

(12) Application for review :--An application for the review of a judgment shall be presented to the Registrar, who shall endorse thereon the date when it is presented and lay the same as early as possible before the Judge or Judges by whom such judgment was delivered along with an office report as to limitation and sufficiency of Court fees. If such Judge or Judges or any one or more of such Judges be no longer attached to the Court, the application shall be laid before the Chief Justice who shall, having regard to the provisions of Rule 5 of Order XLVII of the Code, nominate a Bench for the hearing of such applications :

Provided that an application for the review of a judgment of one Judge who is precluded by absence or other cause for a period of six months next after the presentation of the application from considering the decree or order to which the application refers, shall be heard or disposed of by a Single Judge and that an application for the review of a judgment of two or more Judges, any one or more of whom is or are precluded by absence or other cause for a period of six months next after the presentation of the application from considering the decree or order to which the application refers, shall be heard or disposed of by a Bench consisting of the same or a greater number of Judges.

(13) Subsequent application on the same subject to be heard by the same Bench :--No application to the same effect or with the same object as a previous application upon which a Bench has passed any order other than an order of reference to another Judge or Judges, shall except by way of appeal, ordinarily be heard by any other Bench.

The application when presented by or on behalf of the person by whom or on whose behalf such previous application was made shall give the necessary particulars of such previous application, the nature and the date of the order passed thereon and the name or names of the Judge or judges by whom such order was passed.

(14) Tied up cases :-- (1) A case partly heard by a Bench shall ordinarily be laid before the same Bench for disposal. A case in which a Bench has merely directed notice to issue to the opposite party or passed an ex-parte order shall not be deemed to be a case partly heard by such Bench.

(2) When a criminal revision has been admitted on the question of severity of sentence only, it shall ordinarily be heard the Bench admitting it.

(15) Application in a tied up case :-- Any application in case, which may under the next preceding Rule be heard by a particular Bench shall ordinarily be heard by such Bench.”

Chapter VI, Rule 7 which is relevant for our purposes is also reproduced :

“Chapter VI :-- HEARING AND ADJOURNMENT OF CASES :

7. Part-heard cases :-- A case, which remains part-heard at the end of the day, shall, unless otherwise ordered by the Judges concerned, be taken up first after miscellaneous cases, if any, in the Cause List for the day on which such Judge or Judges next sit. Every part-heard case entered in the list may, unless the Bench orders otherwise, be proceeded with whether any Advocate appearing in the case is present or not :

Provided that if any part-heard case cannot be heard for more than two months on account of the absence of any Judge or Judges constituting the Bench, the Chief Justice may order such part-heard case to be laid before any other Judge or Judges to be heard afresh.”

From a plain reading of the aforesaid Rules it would be clear that the allocation of work to the Judges who are to sit singly or in Division Benches is done under orders of The Chief Justice or in accordance with the directions of the Chief Justice as per Rule 1 of Chapter V. It is clear that Judges can only do that work as is allocated to the Judge under orders of the Chief Justice or under the directions of the Chief Justice. This method of allocation of work/jurisdiction to hear cases of particular nature in the Allahabad High Court is known as framing of the Roster by the Chief Justice. Besides the roster, there can be special orders for allocating a particular case or a particular category of cases to Judge/Judges. The power to allocate work by the Chief Justice includes the power to direct any case or class of cases which are normally to be heard by a single Judge to be heard by a Division Bench and similarly a case normally to be heard by a Division Bench, to be heard by a Judge sitting alone [Ref. Chapter V Rule 2 Proviso (a)].

The Rules, 1952 do contemplate that in certain circumstances a matter has to be normally heard by a particular Judge/Bench like matters which are covered by Rule 7, 12, 13 and 14. Similarly Applications which are made in tied up cases have to be heard by the particular Bench to which the case is tied up. (Ref. Rule 15 of Chapter V).

Chapter VI of the Rules, 1952 lays down the procedure for the listing and hearing of cases before the Court concerned. Rule 7 of Chapter VI provides that all part-heard matter at the end of the day shall be taken up first after miscellaneous cases, if any, on the cause list for that day when the Judge/Judges sit next with a further condition that the Bench shall proceed with the matter whether any Advocate is present or not unless ordered otherwise. This would mean that so far as part-heard cases at the end of the day are concerned, they have to be heard by the Bench concerned after the miscellaneous cases even in the absence of the counsel. The proviso to Rule 7 of Chapter VI further clarifies that if a part-heard matter cannot be heard for more than two months on account of the absence of any Judge/Judges, the Chief Justice may order such part-heard case to be laid before any other Judge/Judges to be heard afresh.

We have narrated the scheme of the Rules, 1952 framed under Article 225 of the Constitution of India only for the purposes of illustrating that irrespective of the general roster notified by the Chief Justice in the matter of allocation of work to the puisne Judges, the Rules do contemplate that certain cases like review application, application for the ex-facie contempt proceedings, application on the same subject, tied up cases and applications in tied up cases are to be listed before the particular Judge/Bench even if the roster as notified under Rule 1 of Chapter V confers jurisdiction in respect of that particular nature of cases to other puisne Judge/Bench.

At this stage itself we may put in a caveat to the aforesaid general statement namely that even in respect of such cases which are to be listed before a particular Bench namely the review

application, the ex facie contempt application, tied up cases and application in tied up cases, the Chief Justice retains the power to withdraw such matters also from a particular Judge/Bench and to assign the same to some other Bench/puisne Judge.

The power of the Chief Justice to withdraw even tied up case/cases which have been heard substantially earlier by a particular Single Judge or the Division Bench is well recognized. The legal position in that regard stands settled under the judgment of the Supreme Court in *State of Rajasthan vs. Prakash Chand* (Supra). Paragraphs 21, 22 and 23 of the Judgment read as follows :

“21. A Full Bench of the Allahabad High Court in *Sanjay Kumar Srivastava v. Acting Chief Justice* was confronted with a similar situation. The Full Bench precisely dealt with an objection raised in that case to the effect that since the writ petition was a part-heard matter of the Division Bench, it was not open to the Chief Justice of the High court to refer that part-heard case to a Full Bench for hearing and decision. It was argued before the Full Bench that once the hearing of the case had started before the Division Bench, the jurisdiction to refer the case or the question involved therein to a larger Bench vests only in the judges hearing the case and not in the Chief Justice. It was also argued that the Chief Justice could not, even on an application made by the Chief Standing Counsel, refer the case which had been heard in part by a Division Bench for decision by a Full Bench of that Court.

22. After referring to the provisions of the Rules of the Allahabad High Court and in particular Rule 1 of Chapter V, which provides that Judges shall sit alone or in such Division Courts as may be constituted by the Chief Justice from time to time and do such work as may be allotted to them by order of the Chief Justice or in accordance with his directions and Rule 6 of Chapter V which inter alia provides :

“6. The Chief Justice may constitute a Bench of two or more Judges to decide a case or any question of law formulated by a Bench hearing a case. In the latter event the decision of such Bench on the question so formulated shall be returned to the Bench hearing the case and that Bench shall follow that decision on such question and dispose of the case after deciding the remaining questions, if any, arising therein.”

and a catena of authorities, rejected the arguments of the learned counsel and opined that the order of the Chief Justice, on an application filed by the Chief Standing Counsel, to refer a case, which was being heard by the Division Bench, for hearing by a larger Bench of three Judges because of the peculiar facts and circumstances as disclosed in the application of the Chief Standing Counsel, was a perfectly valid and a legally sound order. The Bench speaking through S. Saghir Ahmad, J. (as His Lordship then was) said :

“Under Rule 6 of Chapter V of the Rules of Court, it can

well be brought to the notice of the Chief Justice through an application or even otherwise that there was a case which is required to be heard by a larger Bench on account of an important question of law being involved in the case or because of the conflicting decisions on the point in issue in that case. If the Chief Justice takes cognizance of an application laid before him under Rule 6 of Chapter V of the Rules of the Court and constitutes a Bench of two or more Judges to decide the case, he cannot be said to have acted in violation of any statutory provisions.”

The learned Judge then went on to observe :

“In view of the above, it is clear that the Chief Justice enjoys a special status not only under the Constitution but also under Rules of Court, 1952 made in exercise of powers conferred by Article 225 of the Constitution. The Chief Justice alone can determine jurisdiction of various Judges of the Court. He alone can assign work to a Judge sitting alone and to the Judges sitting in Division Bench or to Judges sitting in Full Bench. He alone has the jurisdiction to decide which case will be heard by a Judge sitting alone or which case will be heard by two or more Judges.

The conferment of this power exclusively on the Chief Justice is necessary so that various courts comprising of a Judge sitting alone or in Division Bench etc., work in a coordinated manner and the jurisdiction of one court is not overlapped by other court. If the Judges were free to choose their jurisdiction or any choice was given to them to do whatever case they may like to hear and decide, the machinery of the Court would collapse and the judicial functioning of the Court would cease by generation of internal strife on account of hankering for a particular jurisdiction or a particular case. The nucleus for proper functioning of the Court is the 'self' and 'judicial' discipline of Judges which is sought to be achieved by Rules of Court by placing in the hands of the Chief Justice full authority and power to distribute work to the Judges and to regulate their jurisdiction and sittings.”

23. The above opinion appeals to us and we agree with it. Therefore, from a review of the statutory provisions and the cases on the subject as rightly decided by various High Courts, to which reference has been made by us, it follows that no Judge or a Bench of Judges can assume jurisdiction in a case pending in the high Court unless the case is allotted to him or them by the Chief Justice. Strict adherence of this procedure is essential for maintaining judicial discipline and proper functioning of the Court. No departure from it can be permitted. If every Judge or a High Court starts picking and choosing cases for disposal by him, the discipline in the High court would be the casualty and the administration of justice would suffer. No legal system can permit machinery of the Court to collapse. The Chief Justice has the authority and the jurisdiction to refer even a part-heard case to a Division Bench for its disposal in accordance with law where the rules so demand. It is a complete fallacy to assume that a part-heard case can under no circumstances be withdrawn from the Bench and referred to a larger Bench, even where the Rules make it essential for such a case to be heard by a larger Bench.”

The word 'ordinarily' as used in Rule 14 of Chapter II of Rules, 1952 pertaining to part-heard and tied up cases has been interpreted

by the Supreme Court in **Union of India and Another vs. Hemraj Singh Chauhan and others** reported in **2010 (4) SCC, 290** and in **Krishan Gopal vs. Shri Prakashchandra and others** reported in **AIR, 1974 SC, 209**. The word 'ordinarily' as used in Rule 14 would mean that the normal practice of listing of the tied up case before the same Bench, which had heard the matter earlier, can be departed with under orders of the Chief Justice for good and valid reasons. As a matter of fact the word ordinarily itself indicates that there can be a departure from the normal practice of listing a part-heard case before the same Bench. The word 'ordinarily' means in a large majority of cases but not invariably. The expression 'ordinarily' would mean that the authority empowered to assign matters can exercise that power to place the matter before the Bench, which had earlier heard the matter.

In this context, the word 'ordinarily' has also been considered by a Full Bench of Allahabad High Court in **Smt. Maya Dixit and Others vs. State of U.P. through the Secretary/Special Secretary, Industrial Development/Geology and Mining, Lucknow and others** reported in **2010 (83) ALR, 664**. The relevant part reads as under :

“17.The expression 'ordinarily' would mean that the authority empowered to assigning matters must exercise that power to place the matter before the Bench, which earlier had heard the matter. This can be done in individual cases or by a general order. This rule is based on the principle that a Bench having substantially heard the matter and spent valuable judicial time, must be allowed to ordinarily hear and dispose of the matter. This power, therefore, could only be exercised by the Chief Justice who constitutes the Benches and not by the Registry of the Court, nor can a Bench hold that it can proceed with the matter as a part heard matter.”

The legal position which emerges from a reading of the rules contained in Chapters V and VI of Rules, 1952 specifically those quoted above, is that the Chief Justice is the master of the roster and can alone decide as to which Judge would sit singly and which Judge would sit in Division Benches. The Chief Justice can allocate work to puisne Judges and no Judge has jurisdiction to call for any particular case and to hear the same. Every Judge is bound by the roster framed under Rule 1 of Chapter V of Rules, 1952.

But at the same time, the power of the Chief Justice is circumscribed by the Rules, 1952 in respect of review application, tied up cases, application in tied up cases, applications on same subject and ex facie contempt case. In such matters the case is normally to be listed before the same Bench which had dealt with the matter earlier except when the Chief Justice passes an order for the matter to be listed before another Judge/Bench.

So far as review application, tied up cases, application in tied up cases and ex facie contempt case are concerned, they do not present any difficulty with regard to the case to be treated within the said category. It is the category of cases to be treated as tied up/part-heard that difficulty arises.

A Full Bench of this Court in **Sanjay Kumar Srivastava vs. Acting Chief Justice and others** reported in **1996 (14) LCD, 1170** has explained that later part of Rule 14(1) clarifies that if the Bench has merely directed notice to be issued or passes an ex-parte order, it shall not be a case partly heard by a Bench. The Full Bench went on to hold that if the same Bench passes an order that the matter shall come up before that Bench for further hearing or as part heard, such an order would be in violation of the rules of the Court and, therefore, a nullity. (Ref. Paragraph 69 of the judgment).

Therefore, a case does not become part-heard merely because of passing of an interim order or that notices have been directed to be issued to the respondent. In such a case if any order on the judicial side is passed for the case to be listed as tied up/part-heard before the same Judge/Bench, it would be in violation of Rules of the Court and, therefore, a nullity.

Following the aforesaid Full Bench judgment of this Court, a Division Bench of this Court in **Sanjay Mohan vs. State of U.P. and others** reported in **2008 (1) AWC, 1050** held that at pre admission stage no case can be treated as tied up and no Single Judge or Division Bench of the Court can issue a direction to the Registry to list the matter before him or before the Bench of which he is a member

after the roster has changed. Such orders have been held to be a nullity.

We broadly agree with what has been held in the case of Sanjay Kumar Srivastava (*supra*) and Sanjay Mohan (*supra*), but in our opinion the absolute proposition that in no circumstance a case could be part-heard/tied up at the admission stage may not be correct.

In our opinion what is relevant is not the stage of the case but as to whether the case has been substantially heard i.e. it has been heard extensively and therefore, administration of justice requires that the case should be heard and disposed of by the same Bench.

Such extensive hearing of a petition can take place even at the admission stage e.g. where parties have exchanged their affidavits but the petition has not been formally admitted, in cases where the contesting parties decide not to exchange any further affidavits, in the background that the relevant facts are already on record or where pure questions of law are raised and are to be decided on admitted facts.

We are, therefore, of the opinion that the relevant factors for deciding as to when a case can be said to be 'tied up' or 'part heard', is not dependent on the stage of the proceedings but on whether it had been extensively heard/the Court has devoted sufficient time in the hearing of the petition so as to require in the interest of administration of justice that the matter be disposed of by the same Bench. There cannot be any hard and fast rule that unless the case is listed for final hearing, it can not fall within the category of part-heard case, within the meaning of Rule 14 of Chapter V of the Rules, 1952. To that extent we find it difficult to agree with the observation made in Sanjay Kumar Srivastava (*Supra*) and Sanjay Mohan (*supra*).

This takes the Court to the issue as to who is to decide as to when the case has been extensively heard by the Judge/Bench concerned or the Judge/Bench has devoted sufficient time while hearing the merits of the petition so as to fall within the category of

tied up/part-heard case covered by Rule 14 of Chapter V to be listed before the same Bench/Judge.

Another issue which may come up for consideration is as to who is to decide as to whether the judicial order of the Court for the matter being part-heard or the matter being treated as tied up or for listing as part heard before the same Bench is as per the Rules of the Court or it is a nullity i.e. it can be ignored.

In our opinion the Registry of the High court cannot be permitted to sit over the judicial order of the Court that 'the case be treated as part-heard' or 'be listed before the same Bench'. The issue as to whether a particular case has been extensively heard by the Judge/Bench or not so as to fall within the category of 'tied up' cases, can be examined by the Chief Justice. The Chief Justice alone has to satisfy himself as to whether the case would fall within the category of tied up or part-heard cases covered by Rule 14 of Chapter V and no one else.

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 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.**"

Having arrived at the said conclusion in respect of part-heard and tied up cases, we may consider the other questions which have been referred for consideration to this Bench.

So far as issue no. 'a' is concerned, it may be noticed that the Bench of

three Judges in Smt. Chawali (supra) framed in all 18 questions for consideration out of which 10 questions were framed by order dated 14 December 2014, 4 questions were framed on 25 November 2014. Question nos. 15 to 18 were framed on 26 November 2014. These questions were then compartmentalised and arranged under heading 'A to H'.

From a bare perusal of the 18 questions which were formulated by the Full Bench in Smt. Chawali (supra), which were later compartmentalised as Issues no. A to H, it is clear that no issue was framed in respect of validity of the order of the Chief Justice dated 16 December 2013. We have no hesitation to record that the Full Bench could not have examined the validity of the order of the Chief Justice dated 16 December 2013 in absence of any issue having been framed and the same being addressed by counsel for the parties.

So far as the issue no. B is concerned, we are of the considered opinion that since the order dated 16 December 2013 had been made by the Chief Justice and if the Full Bench of this Court in Smt. Chawali (supra) wanted to examine the legality of the same, the minimum expected was to have issued notice to the Registrar General of the High Court so that he could represent the views of the High Court on the said order. Any direction issued in the absence of the High Court in respect of the order dated 16 December 2014 would be in violation of principles of natural justice. Therefore, answer to question no. B has to be in negative.

So far as issue no. 'C' is concerned, we are of the considered opinion that the Full Bench judgment in Sanjay Kumar Srivastava (supra) had been completely ignored by the majority opinion in Smt. Chawali (supra). The judgment had been noted with approval by the Supreme Court in State of Rajasthan vs. Prakash Chand (supra) and had a material bearing on the issue as to when a case can be said to be tied up/part-heard within the meaning of Rule 14 of Chapter V. Therefore, non consideration of the said judgment in our opinion is bad in law.

So far as the issue no. 'D' is concerned, it has been dealt with extensively, herein above. In our opinion for a case to be treated as tied up or part heard, it must have been extensively heard on merits by the Judge/Bench concerned. The Bench should have spent sufficient time for hearing of the matter on merits so that administration of justice would require

the case to be heard/disposed of by the same Bench. It is only such cases which have to be placed before the Chief Justice for consideration as to whether the matter has to be listed before the same Bench or not.

So far as the issue nos. 'E & F' are concerned, we find that nomination of cases are made in different contingencies. For example :

- (a) where there are large number of fresh cases filed before a particular Bench;
- (b) when a particular Judge recuses himself from the case;
- (c) when there are orders on the judicial side by the Supreme Court or a larger Bench of the High Court for the matter being placed before another Bench.

The nomination/assignment of fresh cases is made for a particular purpose i.e. to clear the backlog of fresh cases before the particular Judge/Bench having jurisdiction as per the roster. The purpose exhausts itself once the roster is changed. Therefore, in respect of fresh cases the nomination/assignment must come to an end with the change of the roster.

So far as the cases which are nominated because of the Judge recuses himself, we are of the considered opinion that having regard to the status of the case i.e. (a) whether the case has been admitted and (b) whether the case has been fixed for final hearing etc, the Chief Justice may consider making an appropriate nomination i.e. whether the nomination would continue till admission or till disposal of the case or till the change of the roster. This would oblivate any confusion, both in the mind of the litigant as well as in the minds of the officials of the Registry, regarding listing of the case after the change of the roster.

So far as the third category of cases are concerned, we are of the considered opinion that the Chief Justice may consider application of the same principle as in the cases covered by category 'B' above.

In respect of the last question, we are of the opinion that the nomination by the Chief Justice in the name of one of the member of the Bench would suffice inasmuch as if for certain reasons the other member of the Bench is not available, the case can still proceed. This will avoid unnecessary delay in the disposal of the matter. The nomination can be in the name of the senior member of the Bench or in the name of the other

member of the Bench, as may be deemed fit, by the Chief Justice.

All the questions referred are answered accordingly.

Let the records of Criminal Appeal No. 4922 of 2006 be placed before the Chief Justice for appropriate orders for listing of the appeal.

(Hon'ble Arun Tandon)

(Hon'ble V.K. Shukla,J.)
(I agree)

(Hon'ble P.K.S. Baghel,J.)
(I agree)

(Hon'ble Dilip Gupta,J.)
(I agree)

(Hon'ble M.K. Gupta,J.)
(I agree)

Order Date : 28.07.2015
VR/

Hon'ble V.K. Shukla,J.
Hon'ble Arun Tandon,J.
Hon'ble Dilip Gupta,J.
Hon'ble Pradeep Kumar Singh Baghel,J.
Hon'ble Manoj Kumar Gupta,J.

For orders, see our order of date,
passed on the separate sheets.

(Hon'ble Arun Tandon,J.)

(Hon'ble V.K. Shukla,J.)

(Hon'ble P.K.S. Baghel,J.)

(Hon'ble Dilip Gupta,J.)

(Hon'ble M.K.Gupta,J.)

Order Date : 28.07.2015
VR/