FEDERATION OF BAR ASSOCIATIONS IN KARNATAKA A

v.

UNION OF INDIA

JULY 24, 2000

[K.T. THOMAS AND M.B. SHAH, JJ.] B

Constitution of India, 1950:

Article 32—Writ Petition—Maintainability of—Infringement of fundamental right—Petition filed for establishing separate bench of High Court—Based on ground of long distance from Bangalore to various district centres which becomes expensive and time consuming for litigants to seek justice—Held, ground too fragile to maintain writ petition in absence of infringement of fundamental right. C

Article 214—Establishing High Court for each State—Establishment of Benches of High Court at different centres not stated in the Article—Chief Justice of Karnataka High Court constitutes a committee of five Judges to study the demand for a Bench away from the principal seat of High Court—Held, committee was rightly constituted—Further, opinion of Chief Justice disfavouring establishment of separate Bench must be treated as opinion of High Court and not his personal opinion—States Reorganisation Act, 1956—Section 51. D E

The Petitioner filed a writ petition for establishing a separate Bench of High Court at a suitable place in northern Karnataka apart from its principal seat at Bangalore. The reason submitted by the Petitioner was long distance from Bangalore to various district centres of the State. The committee of five Judges was constituted by the Chief Justice of Karnataka High Court to study the proposition and submit the report on establishment of a Bench outside the principal seat of the High Court. The committee disfavoured the establishment. Hence this petition. F G

Dismissing the petition, this Court

HELD: 1.1. The petitioner Federation is not the accredited representative of the litigants of Karnataka and no litigant can claim a fundamental right to have the High Court located within proximal distance of his residence; as H

A such there is no infringement of fundamental right of the Petitioner. Thus, the Petition under Article 32 of the Constitution of India, 1950 for issuance of writ of mandamus to the Union of India for establishing a permanent bench of the High Court "at any suitable place in northern Karnataka" is not maintainable. [659-A; 657-C-D]

B *Tamil Nadu Cauvery Neerppasana Vilaiporulgal Vivasayigal Nala Urimai Padhugappu Sangam v. Union of India and Ors.*, [1990] 3 SCC 440, distinguished.

2.1. The High Court is the best suited machinery to decide whether it is necessary and feasible to have a Bench outside the principle seat of that C High Court. The Chief justice of the High Court is the important consultee in the matter of establishment of a Bench of the High Court. He being the head of that High Court has to form an opinion when it is required during such consultation process. The Chief justice will not be guided by any political or parochial considerations. When he gives the opinion it is the opinion of D the High Court and not merely his personal opinion. [659-F-H]

2.2. The Committee of five Judges, constituted by the Chief Justice of Karnataka High Court, has disfavoured the establishments of a Bench outside the principal seat of the High Court. So it is pernicious to dissect a High Court into different regions on the ground of political or other considerations. E [660-C-E]

2.3. Having different Benches of the High Court located at different regions would inflict heavy burden on the State exchequer and the functional efficiency of the High Court would be much impaired by keeping High Courts in different regions. When the Chief Justice of the High Court is a singular F office, as also the Advocate general, vivisection of the High Court into different Benches at different regions would undoubtedly affect the efficacy of the functioning of the High Court. Distance factor to the seat of the High Court may be a relevant consideration but not the sole consideration nor even the decisive consideration in determining the question of establishing other Benches of the High Court away from the principal seat. [660-F-G]

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CIVIL ORIGINAL JURISDICTION : Writ Petition (C) No. 379 of 2000.

(Under Article 32 of the Constitution of India.)

N.D.B. Raju, Bharathi Raju and Indeevar Goodwill for the Petitioner.

H The Judgment of the Court was delivered by

THOMAS, J. The demand for establishment of High Court benches at centres different from the principal seat is a clamour without abatement. It may be an ideal proposition to have justice dispensing centers located at close proximity to all seekers of justice but as a proposition for practical implementation proliferation of High Court benches is fraught with many irredeemable infirmities. Taking cue from those few States where benches have been established away from the principal seat of the High Court, pressure is being mounted up, mostly by members of mofussil Bar Associations to have branches of High Courts located at such centers also. Here is one such case of persisting clamour for a bench of Karnataka High Court at Hubli or Dharwad.

The petitioner is described as "Federation of Bar Associations in Karnataka" comprising of District Presidents of various Bar Associations in Karnataka State numbering 18. They filed this writ petition under Article 32 of the Constitution of India, for issuance of a writ of mandamus to the Union of India for establishing a permanent bench of the High Court "at any suitable place in northern Karnataka". The case sought to be made out by the petitioner is that such a bench is imperatively necessary for, *inter alia*, the following reasons:

(1) The distance from Bangalore (which is the principal seat of the High Court of Karnataka) to various district centers of the State ranges between 425-613 Kms., and hence litigants from all these districts have to travel a long distance to reach the High Court. It is highly expensive besides being time consuming for such seekers of justice.

(2) In six other States the High Courts have benches situated away from the principal seat. They are: Maharashtra, Madhya Pradesh, Rajasthan, Uttar Pradesh, Jammu & Kashmir and Bihar. (Tamil Nadu also will soon have a different bench of the High Court at Madurai). If such States can have benches outside the principal seat of the High Court why not Karnataka also get the same benefit, poses the petitioner.

(3) As early as 29.10.1979, the then Chief Justice of Karnataka High Court - Justice D.M. Chandrashekar had recommended for establishment of a bench of the High Court at Dharwad-Hubli.

The other reasons projected by the petitioner in the writ petition are merely repetitions of the above three reasons by using different words. It is

A pertinent to point out that petitioner has admitted that a Committee of five Judges was constituted by the Chief Justice of Karnataka High Court to study the proposition and to submit a report and that Committee, after hearing the respective Bar Associations, submitted a report in June 2000 disfavouring the proposal for establishment of a separate bench away from the principal seat of the High Court.

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When we asked the learned counsel for the petitioner as to how the petitioner can maintain this writ petition as no fundamental right has been presumably infringed or as to how there is any scope for enforcement of any fundamental right. Learned counsel in that context cited the decision of this C Court in *Tamil Nadu Cauvery Neerppasana Vilaiporulgal Vivasayigal Nala Urimai Padhugappu Sangam* v. *Union of India and Ors.*, [1990] 3 SCC 440. It was rendered on a writ petition filed by a Society registered under the Tamil Nadu Societies Registration Act. That writ petition was filed in this Court under Article 32 of the Constitution of India for a direction to the Union of India to refer the dispute relating to the water utilization of Cauvery River as D per the terms of the Inter-State Water Dispute Act 1957. When objections regarding maintainability of the writ petition under Article 32 was raised a three Judge Bench of this Court observed thus:

> "In view of the fact that the State of Tamil Nadu has now supported the petitioner entirely and without any reservation and the court has E kept the matter before it for about 7 years, now to throw out the petition at this stage by accepting the objection raised on behalf of the State of Karnataka that a petition of a society like the petitioner of the relief indicated is not maintainable would be ignoring the actual state of affairs, would be too technical an approach and in our view F would be wholly unfair and unjust. Accordingly, we treat this petition as one in which the State of Tamil Nadu is indeed the petitioner though we have not made a formal order of transposition in the absence of a specific request."

The above premise is too fragile a ground for the petitioner in this case G to sustain this petition under Article 32 of the Constitution. However, learned counsel tried it from another angle by submitting that the Bar represents the causes of the litigants and hence the fundamental right of the litigants to have speedier and less expensive justice dispensation system is being espoused by the petitioner Federation.

H We are not impressed by the said argument for two reasons. First is that

petitioner Federation is not the accredited representative of the litigants of Karnataka. Second is that no litigant can claim a fundamental right to have the High Court located within proximal distance of his residence.

Be that as it may, we are tempted to observe that petitioner does not have a case even on merits. Under Article 214 of the Constitution "there shall be a High Court for each State". Nothing is stated therein as to the establishment of benches of the High Court at different centers. The statutory provision under which a bench of the High Court of Karnataka can be created is included in Section 51 of the States Reorganisation Act, 1956. That section reads thus:

> "51. Principal seat and other places of sitting of High Courts for new States.-
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> (1) The principal seat of the High Court for a new State shall be at such place as the President may, by notified order, appoint.
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> (2) The President may, after consultation with the Governor of a new State and the Chief Justice of the High Court for that State, by notified order, provide for the establishment of a permanent Bench or Benches of that High Court at one or more places within the State other than the principal seat of the High Court and for any matters connected therewith.
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> (3) Notwithstanding anything contained in sub-section (1) or sub-section (2), the Judges and Division Courts of the High Court for a new State may also sit at such other place or places in that State as the Chief Justice may, with the approval of the Governor, appoint."

As the Chief Justice of the High Court concerned is the important consultee in the matter of establishment of a bench of the High Court, he being the head of that High Court he has to form an opinion when it is required during such consultation process. Normally the Chief Justice will not be guided by any political or parochial considerations. When he gives the opinion it is the opinion of the High Court and not merely his personal opinion. So naturally he will ascertain the views of his colleague judges before he conveys his opinion. In the present case the Chief Justice of Karnataka High Court had done the right thing when he constituted a Committee of judges of the High Court to study all the pros and cons of the demand for a bench away from the principal seat of the High Court. Such a

course became a practical necessity as the Chief Justice himself was a person transferred to that High Court from outside the State. Normally he could not take a decision on his own without such consultation with his colleagues regarding matters of such great importance for the High Court and for the future of that institution. Any opinion which he gives, when acted upon, would have far reaching implications for that High Court, even after his term of office is over and hence it is imperatively needed that he ascertains the view of his colleagues in the same High Court.

When the petitioner admitted that the Committee of five Judges, constituted by the Chief Justice of Karnataka High Court, has disfavoured the establishment of a bench outside the principal seat of the High Court the Chief Justice cannot be pressurised to take a different view through agitations and other tactics. The question of establishment of a bench of High Court away from the principal seat of the High Court is not to be decided on emotional or sentimental or parochial considerations. The High Court is the best suited machinery to decide whether it is necessary and feasible to have a bench outside the principal seat of that High Court. If the High Court does not favour such establishment it is pernicious to dissect a High Court into different regions on the ground of political or other considerations. So it is out of question to decide for establishment of a bench outside the principal seat of a High Court contrary to the opinion of the Chief Justice of that High Court which has been formed after considering the views of the colleague Judges.

Practical difficulties in having different benches of the High Court located at different regions are far too many. Apart from the heavy burden such a bench would inflict on the State exchequer the functional efficiency of the High Court would be much impaired by keeping High Courts in different regions. When the Chief Justice of the High Court is a singular office, and when the Advocate General is also a singular office, vivisection of the High Court into different benches at different regions would undoubtedly affect the efficacy of the functioning of the High Court. Distance factor (to the seat of the High Court) may be a relevant consideration but not the sole consideration nor even the decisive consideration in determining the question of establishing other benches of the High Court away from the principal seat. Distance factor is a problem as far as many governmental and public institutions are concerned. The distance from Kanyakumari to New Delhi is not the decisive consideration for establishment of National Capital nor the venue of the apex Court. There is no use in harping on the situations in certain other larger States where High

Courts have benches established away from the principal seat due to variety of reasons. A

We find no case for the petitioner even on merits, when the Committee of Judges constituted by the Chief Justice of the High Court came to the conclusion that establishment of a bench of the High Court away from Bangalore is inadvisable. For this reason we dismiss the writ petition. B

N.J. Petition dismissed.