

Rangadas Naik Vs. State of Karnataka

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Court : Karnataka

Decided On : Aug-16-1995

Reported in : 1997ACJ1392; ILR1996KAR975; 1996(2)KarLJ191

Judge : Tirath S. Thakur, J.

Acts : [Motor Vehicles Act, 1988](#) - Sections 165; Motor Vehicles (Amendment) Act, 1994; [Constitution of India](#) - Article 227

Appeal No. : W.Ps. Nos. 24754 of 1995

Appellant : Rangadas Naik

Respondent : State of Karnataka

Advocate for Def. : Chidanand Ullal, Govt. Adv.

Advocate for Pet/Ap. : Mahesh R. Uppin, ;Suresh M. Lathur, ;B.J. Somayaji, ;B. Veerabhadrappe, ;M.N. Gadag, ;H.C. Betsur, ;P. Dhananjaya, ;Ashok R. Kalyanshetty and ;B.M. Siddappa, Advs.

Disposition : Writ petition partly allowed

Judgement :

ORDER

Tirath S. Thakur, J.

1. The Petitioners in all these Writ Petitions except those in Writ Petition Nos. 27695/95 & 25119/1995 are claimants in different Claim Petitions presently pending disposal before the respective Motor Accidents Claims Tribunals in the State of Karnataka. Writ Petitions No. 27695/95 & 25119/1995 have been filed by the Belgaum and the Mangalore Bar Associations in public interest for the general benefit of the claimants who are for economic reasons disabled from instituting independent Writ Petitions.

2. The Writ Petitions call in question Notification dated 30th March, 1995, issued by the Government of Karnataka in exercise of its powers under Section 165 of the [Motor Vehicles Act, 1988](#) and Circulars dated 6th April, 1995 and 29th May, 1995 issued by the Registrar (General) of the High Court of Karnataka, prescribing certain Guidelines for the Accidents Claims Tribunal to follow while transferring the Accidents Claims Cases to the Additional Tribunals constituted under the said Notification.

3. By Notification dated 30th March, 1995, the Government has in partial modification of all previous orders appointed all Civil Judges as Members of the Additional Motor Accidents Claims Tribunals and directed that Motor Accidents Claims Tribunals constituted at the District Headquarters presided over by the Principal District and Sessions Judge shall transfer the Claim Petitions instituted before them to the Additional Claims Tribunals constituted under the Notification depending upon the area of the Civil Jurisdiction exercised by the Judges or otherwise deemed prudent in the interest of speedy disposal of such claims. Since the validity of the Notification has been questioned on various grounds, it is necessary to extract the same in extenso. The Notification reads thus:-

'GOVERNMENT OF KARNATAKA

No. HTD 2 TMR 92 Karnataka Govt. Secretariat, M.S. Building, Bangalore, Dt. 30th March, 1995. NOTIFICATION

In exercise of the powers conferred under Section 165 of the Motor Vehicles Act 1988, the Government of Karnataka on the recommendation of the High Court of Karnataka and in partial modification of all previous orders appointing members to

Motor Accidents Claims Tribunal appoints :-

- a) The Principal District and Sessions Judges as members of the Motor Accidents Claims Tribunals at the respective District Headquarters;
- b) The Additional District Judges of the District as members of the Additional Motor Accidents Claims Tribunals;
- c) All the Civil Judges as members of the Additional Motor Accidents claims Tribunal.

II. To facilitate proper and effective supervision over the functioning of the additional Motor Accidents Claims Tribunals it is hereby stipulated that:-

- a) Every claims petition shall be instituted in the Motor Accidents Claims Tribunals constituted at the District Headquarters presided over by the Principal District & Sessions Judge;
- b) The claims shall be transferred to the Additional Motor Accidents Claims Tribunals constituted as above, by the Principal District & Sessions Judges of the District depending upon the area of Civil Jurisdiction exercised by the Judges and as otherwise deemed prudent in the interest of speedy disposal of such claims. By Order and in the Name of the Governor of Karnataka, Sd/-(A. CHANNAPPA) Under Secretary to Govt., Home & Transport Department (Transport).

4. Shortly after the issue of the aforesaid Notification the Registrar General of the High Court of Karnataka, issued a Circular dated 6th of April, 1995, forwarding therewith copies of the Notification issued by the Government to the Claims Tribunal with instructions to transfer the pending cases on the files of the concerned Motor Accidents Claims Tribunal and the existing Additional Motor Accidents Claims Tribunal to the Additional Motor Accidents Claims Tribunals constituted under the Notification. The Circular reads thus:-

'No.GOB-(I)533/94 High Court of Karnataka,Bangalore,dt.6th April,1995 From.The Registrar General,High Court of Karnataka,Bangalore.To,Sir,Sub: Forwarded of Notification issued by the Government under Section 165 of the MVC Act

appointing all District Judges/Additional District Judges and Civil Judges as Members of the claims Tribunal in partial Modification of all previous order - Regarding. With reference to the above subject, I am to forward herewith a copy of the Notification No. HTD 2 TMR 92 dated 30.3.1995 issued by the Secretary to the Government, Home & Transport Department, Bangalore, under Section 165 of the MVC Act for circulating the said Notification to all the Additional District Judges/Civil Judges working under your Unit.

Further I am to inform that all claims cases pending on the file of the Motor Accidents Claims Tribunals and the existing Additional Motor Accidents Claims Tribunal shall also be transferred to the Additional Motor Accidents Claims Tribunal constituted as per the said Notification after following the procedure as per Rules.

Further, I am also to inform that the said Notification is effective from 3.4.1995 i.e., the date of publication in the official (extraordinary) Gazette. Yours faithfully, Sd/-
(M.P. CHINNAPPA) Registrar-General.

5. Nearly a month and a half later, yet another Circular was issued by the Registrar General in continuation of the earlier one in which certain Guidelines were framed for the Motor Accidents Claims Tribunals to keep in mind while exercising their jurisdiction in the matter of transfer of pending Claims Petitions. The Guidelines given in the Circular read as under: -

- '1. All the claim petitions, in which the recording of evidence has been completed and hearing of the arguments has been over, shall be disposed of by the Motor Accidents Claims Tribunals before which they are pending;
2. All the claim petitions, in which the recording of evidence has been completed and the matters are posted to hear arguments, shall be disposed of by the Motor Accidents Claims Tribunals in which the claim petitions are pending;
3. All the claim petitions, in which the recording of evidence is to commence and in which all the parties are represented by Lawyers of their choice, shall be transferred to the Additional Motor Accidents Claims Tribunals having jurisdiction

to try the claim petitions giving a date for further proceedings with a direction to the parties to appear before the transferee Tribunals on the date so given and at the time stated in the order, without expecting any fresh notice or communication from the transferee - Tribunals. The transferee -Tribunals shall proceed to determine the claim petitions as they go to them.

4. All the claim petitions, in which the recording of evidence is to commence, but in which only some or the other parties, shall be transferred to the Motor Accidents Claims Tribunals having Jurisdiction for disposal according to law, with a direction to issue notice to the parties yet to be served and proceed to determine the claim petitions after service of notice on such parties.

5. With a view to obviate the avoidable inconvenience to the respondents and claimants, the Additional Motor Accidents Claims Tribunals presided over by Civil Judges, should be asked to operate with regard to the amounts awarded as compensation on the account of the Civil Court deposit, pending necessary amendments to the Accounts Rules for Subordinate Courts and the other relevant Rules. Such a practice would prevent the respondents and claimants awarded with compensation, from going to the M.A.C.T.-1 situated at the District Headquarters, either to deposit the amount awarded as compensation or to receive the same.'

6. Aggrieved by the Notification and the Circulars mentioned above, the petitioners have filed these Petitions challenging the validity thereof on a number of grounds. It was urged by the learned Counsel appearing on behalf of the petitioners that Notification dated 30th March, 1995 was illegal and violative of Section 165 of the Motor Vehicles Act in that; i) it does not constitute a Tribunal before appointing the Civil Judge as ex-officio members thereof; ii) it does not specify the territorial jurisdiction of each such Tribunal; iii) it has the effect of depriving the claimants of the choice of forum available to them under Section 166(2) of the Act; and iv) it appoints all Civil Judges as Members of the Tribunals ex-officio even when all of them are not eligible to be appointed as District Judges in terms of Article 233 of the Constitution.

7. In so far as Circulars issued by the High Court are concerned, the challenge is based on the proposition that the High Court cannot in exercise of its

administrative or judicial power of superintendence issue a Circular so as to usurp the jurisdiction otherwise vested in the Tribunals in terms of a Statutory Notification issued by the Government. It was contended that inasmuch as the Circulars issued by the High Court leave no choice for the Tribunals except to transfer the pending cases and those that may be instituted hereafter to the Additional Tribunals comprising of the Civil Judges concerned, it grossly interfered with the exercise of jurisdiction vested with the Principal Accidents Claims Tribunals thereby rendering the Circulars illegal. Alternatively it was submitted that the impugned Notification dated 30th March, 1995, did not have any application to the pending Motor Accidents Claim cases and that the directions issued by the High Court by virtue of the two circulars mentioned earlier amounted to making an unwarranted addition into the said Notification.

8. The Respondents have in a common statement of objections filed to all these Petitions, denied the allegations made by the Writ petitioners and asserted that the Notifications as also the Circulars issued are perfectly legal and within the powers of the authorities issuing the same.

9. In the context of the above the following Questions fall for Consideration:-

1) Is the Notification dated 30th March, 1995, in any manner violative of Section 165 of the [Motor Vehicles Act, 1988](#) ?

2) Does the Notification in question in any manner offend the right of the claimants to choose the Forum for the adjudication of their Claim Petition in terms of Section 166(2) of the Act?

3) Is the Ex-officio appointment of all Civil Judges as Members of the Additional Motor Accidents Claims Tribunal, in any manner illegal ?

4) Are the Circulars issued by the High Court incompetent/or illegal because they interfere with the exercise of discretion by the Principal Accidents Claims Tribunal in the matter of transfer of the Claims Petitions to the Additional Tribunals ?

For the sake of clarity in the treatment to each one of these Points, I propose to deal With the same ad seriatum.

10. Re:Question No. 1 :- Learned Counsel for petitioners made a two fold submission in so far as this question is concerned. It was urged that under Section 165 of the [Motor Vehicles Act, 1988](#), before the Government could appoint whether ex-officio or otherwise Members of an Accidents Claims Tribunal or an Additional Tribunal it must first constitute such a Tribunal by an independent Notification. According to the petitioners, the appointment of Civil Judges as Members of the Additional Tribunals without first constituting such Additional Tribunals by an independent Notification was inconsequential, legally defective and non-est. Alternatively, it was submitted that a Notification constituting a Tribunal in order to be valid must specify the area for which the same is being constituted. It was urged that in as much as the impugned Notification did not specify the area for which the Additional Tribunals were being constituted, the same fell short of the requirements of the law, and was liable to be quashed.

11. Section 165 of the Motor Vehicles Act reads thus:

'Section 165(1) A State Government may by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals (hereafter in this Chapter referred to as Claims Tribunal) for such area as may be specified in the notification for the purpose of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both.

Explanation:- For the removal of doubts, it is hereby declared that the expression 'claims for compensation in respect of accidents involving the death of or bodily injury to persons arising out of the use of motor vehicles' includes claims for compensation under Section 140 (and Section 163-A).

(2) A Claims Tribunal shall consist of such number of members as the State Government may think fit to appoint and where it consists of two or more members, one of them shall be appointed as the Chairman thereof.

(3) A person shall not be qualified for appointment as a member of a Claims Tribunal unless he,-

(a) is, or has been, a Judge of a High Court, or

(b) is, or has been a District Judge, or

(c) is qualified for appointment as a Judge of a High Court (or as a District Judge).

(4) Where two or more Claims Tribunals are constituted for any area, the State Government, may by general or special order, regulate the distribution of business among them.

12. A plain reading of the provision shows that the same does not in terms require the Government to issue two separate Notifications, one constituting the Tribunal and the other appointing the Members thereof. What is required is that the Government should constitute a Tribunal specifying the area for which it will exercise jurisdiction and appoint a person duly qualified in terms of Sub-section (3) of Section 165 to serve as Member of any such Tribunal. The constitution of the Tribunal and the appointment of the Member or Members to the same, are not in terms of Section 165 required to be two separate exercises to be accomplished by two separate Notifications issued for the purpose. There is nothing in the provisions of Section 165 to prevent the Government from constituting a Tribunal or an additional Tribunal and by the same Notification appointing Member or Members of the same. The very fact that two separate Notifications could also have been issued for the purpose does not by itself mean that, that was the only proper course open to the Government. A composite Notification constituting a Tribunal and appointing Members of the same and even providing for distribution of business if there are more than one Tribunals constituted under the said provision, was permissible and could have been legitimately issued by the Government.

13. In the instant case, Notification dated 30th March, 1995 is a composite Notification by which the Government has constituted the Additional Tribunals and appointed Civil Judges as ex-officio Members of the same and also provided for the distribution of business among such Tribunals. The expression 'The Claims shall be transferred to the Additional Motor Accidents Claims Tribunals constituted as above' clearly imply the constitution of the Tribunals in terms of Section 165(1)

and appointment of the Civil Judges, as Members of the same. A harmonious and a careful reading of the Notification leaves hardly any manner of doubt that by the impugned Notification the Government intended to constitute the Additional Motor Accidents Claims Tribunals and appoint the Civil Judge as ex-officio Members of the same. This is apparent not only from a bare reading of the Notification but also the background in which the said Notification came to be issued. The Notification makes a reference to the recommendations made by the High Court of Karnataka which recommendations were admittedly made with a view to constitute and appoint the Civil Judges as Additional Motor Accident Claims Tribunals under the Motor Vehicles Act. The argument that the impugned Notification does not actually constitute the Tribunals as required under Section 165 but simply appoints Members to nonexistent Tribunals, therefore does not commend itself to me nor do I have any hesitation in rejecting the same.

14. Equally untenable is the other limb of the petitioners' submission in so far as this aspect of the case is concerned. It was contended that the Notification in question does not specify the area for which the Additional Tribunals are being constituted as required by Section 165(1) of the Act. It is true that the State Government while constituting one or more Motor Accidents Claims Tribunals, under Section 165(1) is required to specify the area/areas for which such Tribunal or Tribunals are being constituted, yet I find it difficult to accept the argument advanced on behalf of the petitioners that the impugned Notification does not so specify the areas for which the Additional Tribunals have been constituted. The expression 'the claims shall be transferred to the Additional Motor Accidents Claims Tribunals constituted as above by the Principal District & Sessions Judge of the District depending upon the area of Civil jurisdiction exercised by the Judges and as otherwise deemed prudent in the interest of justice and speedy disposal of such claims' clearly implies that the Civil Judges constituted as Additional Tribunals under the Act, shall exercise the powers vested in the Tribunals limited to the area of their civil jurisdiction. It is not as though the Notification purports to constitute the Civil Judges for areas beyond their civil Jurisdiction nor is it possible to say that the Civil Judges appointed as Additional Tribunals, will have no defined area in respect of which they shall be exercising their jurisdiction. While it is true that the Notification does not in specific terms state that the Additional Tribunals

comprising of the Civil Judges shall exercise jurisdiction only in respect of areas falling within their territorial jurisdiction, yet the intention of the Government is much too clear from the expression appearing in the Notification and re-produced above to need any elaboration. A reading of the Notification hardly leaves any doubt that the Additional Tribunal to whom the Accidents Claims Cases may be transferred by the Principal District & Sessions Judge in his capacity as the Motor Accidents Claims Tribunal at the District Headquarters, will exercise his jurisdiction limited only to the area of his civil Jurisdiction as a Civil Judge. No fault can thus be found with the impugned Notification on this ground also. My answer to question No. 1 is therefore in the negative.

15. Re: Question No. 2 :-

On behalf of the petitioners it was contended that in terms of Section 166 of the Motor Vehicles Act, the claimants have the option of instituting their claims either in the Motor Accidents Claims Tribunal within whose jurisdiction the accident has taken place or the Tribunal within whose jurisdiction the claimants reside or the Tribunal within whose jurisdiction the defendant resides. This option, it was argued, is taken away by the impugned Notification, according to which, all such claims had to be necessarily instituted in the Motor Accident Claims Tribunal at the District Headquarters and presided over by the Principal District & Sessions Judge. The compulsion created by the Notification, it was contended was offensive to the statutory option given to the claimants by Section 166 of the Act, rendering the Notification illegal. I find no substance in this argument either. Section 166 no doubt gives to the claimants the option of instituting the Claim Petitions with any one of the three Tribunals, referred to therein yet it is difficult to appreciate how any such option is in any manner taken away by the impugned Notification. Take for instance, a case where the accident takes place within the jurisdiction of Tribunal-'A' the claimant resides within the jurisdiction of the Tribunal-'B' and the Defendants resides within the jurisdiction of the Tribunal-'C'. The option to the claimants to institute the Claim Petition in any one of these three Tribunals continues to remain available notwithstanding the fact that within the jurisdiction of one of such Tribunals, the Government has under the impugned Notification created more than one Additional Tribunal, The creation of Additional Tribunals,

does not appear to have any co-relation with the option exercisable by a claimant in so far as the choice of Forum is concerned. All that the Notification requires is that in case the claimant chooses to institute the proceedings within the jurisdiction of one of the three Tribunals, referred to in Section 166, such an institution shall be made only by presenting a Claim Petition in the Motor Accidents Claims Tribunal at the District Headquarters presided over by the Principal District and Sessions Judge. It is therefore obvious that once the option available to the claimant is exercised, the requirement of Section 166 is exhausted. After such an institution, the claimant cannot claim any further right statutory or otherwise to have his Claim Petition tried necessarily either by the Principal Motor Accidents Claims Tribunal or by any particular Additional Tribunal created by the Government. I therefore see no conflict between the impugned Notification and the provisions of Section 166 of this Act so as to render the former illegal or incompetent.

16. Reg: Question No. 3 :-

Section 165 Sub-section (3) prescribes that a person shall not be qualified for appointment as a member of the Tribunal unless he satisfies the conditions stipulated therein namely; a) is or has been a Judge of the High Court; b) is or has been a District Judge; c) is qualified for appointment as a Judge of the High Court or as a District Judge. The words 'or as a District Judge' appearing in Clause (c) of Section 165(3) were added by Motor Vehicles Amendment Act No. 54/1994 with effect from 14th of November, 1994. On behalf of the petitioner it was contended that only such persons could be appointed as Members of the Claims Tribunals as were qualified to be appointed as District Judges under Article 233 of the Constitution, and were eligible for appointment by direct recruitment as such Judges, Ex-officio appointment of all Civil Judges, regardless whether they were actually qualified to be appointed as District Judges under Article 233 was illegal, according to the petitioners.

17. I find no merit even in this submission. Article 233 of the [Constitution of India](#), reads thus:-

'Article 233(1) Appointments of persons to be, and the posting and promotion of, District Judges in any State shall be made by the Governor of the State in

consultation with the High Court exercising jurisdiction in relation to such State.

(2) A person not already in the service of the Union or of the State shall only be eligible to be appointed a. District Judge if he has been for not less than seven years in advocate or a pleader and is recommended by the High Court for appointment.'

18. A plain reading of the above provision shows that the same provides the qualifications required for appointment as a District Judge, on direct recruitment basis only. The provisions of Article 233 do not however forbid appointments by promotion of Civil Judges in accordance with the Rules regulating such appointments. On the contrary Article 233(2) prescribes the conditions of eligibility for appointment as a District Judge only in regard to 'persons not already in service'. Civil Judges are not therefore governed by the requirement of Article 233 of the [Constitution of India](#) in so far as their eligibility for promotion as District Judges are concerned. Such appointment is on the other hand governed by Karnataka Judicial Service (Recruitment) Rules, 1983, which provide that a Civil Judge shall be eligible for promotion irrespective of the length of his service or the number of years he has put in as an Advocate or as a Pleader. It follows that all Civil Judges are eligible to be appointed as District Judges by promotion regardless of the fact whether they fulfil the eligibility conditions prescribed by Article 233(2) for appointment by direct recruitment to the said post.

19. The argument advanced on behalf of the petitioners that for the purposes of appointments as Members of the Accidents Claims Tribunal, the qualifications required to be fulfilled are only those that are prescribed for direct recruit does not impress me. I see no reason to read into the provisions of Section 165 any such requirement. Appointments it is well settled can be made both by way of direct recruitment as also by way of promotion. Once a person is eligible to be appointed by either one of these two modes, he has to be treated to be a person qualified for appointment to any such post. There is no principle of law or other sound reason by which the term 'qualified for appointment' appearing in Section 165(3)(C) should be interpreted to mean qualified for direct recruitment only. The challenge to the Notification based on the alleged ineligibility of the Civil Judges for

appointment as District Judges also fails in the above circumstances.

20. Reg:Question No. 4:-

That brings me to the question as to whether the two Circulars issued by the High Court are legally valid and competent. The petitioners argued that the High Court had no power or jurisdiction to issue such Circulars except to the extent Article 227 of the Constitution empowered it to have superintendence over all Courts and Tribunals subordinate to it throughout the territory in relation to which it exercised jurisdiction. It was urged that although Article 227 envisaged both Judicial as also Administrative superintendence over the Courts and Tribunals functioning within the limits of its territorial jurisdiction, any such power whether Judicial or Administrative, did not extend to the issue of directions to a Tribunal exercising powers under a specific Statute, to act in a particular fashion or to pass a specific order in exercise of such jurisdiction. Reliance was placed in support upon Judgments of the Supreme Court in *State of Punjab And Another v. Hari Krishan Sharma*, : [1966]2SCR982 in *COMMISSIONER OF POLICE, BOMBAY v. GORDHANDAS BHANJI*, : [1952]1SCR135 in *THE PURTABPUR CO. LTD. v. CANE COMMISSIONER OF BIHAR AND ORS.*, : [1969]2SCR807 , : [1984]1SCR211 in *MOHAMED YUNUS v. MOHAMED MUSTAQIM AND ORS.*, : [1984]1SCR211

21. Mr. Ullal, learned Government Advocate appearing on behalf of the Respondents however sought to support the issue of the Circulars by the High Court and placed reliance upon Article 227 to contend that the power of superintendence was unlimited, and could be exercised by the High Court even for the purposes of giving guidelines to Tribunals functioning within the territorial limits of its jurisdiction. He relied upon the meaning of the word 'superintendence' given in the Oxford Dictionary and Law Lexicon to show that the name comprehends the power to issue Guidelines and even directives to the subordinate Tribunals. He relied upon in *PHALGU DUTT KIRPA RAM v. SMT. PUSHPA WANTI AND ORS.*, , *PARTAP SINGH KAIRON v. GURMEJ SINGH* and *ANNAMALAI MUDALIAR*, : AIR1953 Mad362 , S.R.No. 3853/1952, D/3.9.1952, in support of his argument that the power available to the High Court under Article 227(1) was wide enough to

justify the issue of the impugned Circulars and the Guidelines contained therein.

22. What then is the true content and scope of the power of superintendence available to the High Court under Article 227 of the [Constitution of India](#)? Is it indefinite and unlimited both in the matters of Judicial interference as also the administrative control or is the power hedged in by any limitation In other words is the very plentitude of the power available to the High Court enough to justify its issuing what in its wisdom may appear to be proper Guidelines or tests to be adopted by a Tribunal exercising independent powers under a special Statute or is any such power beyond the purview of Article 227 are some of the incidental questions that arise for consideration. Article 227 as the same stands after the 44th Amendment Act, 1978 reads thus:-

'Article 227(1) Every High court shall have superintendence over all courts and tribunals through out the territories in relation to which it exercises jurisdiction. -

(2) Without prejudice to the generality of the foregoing provision, the High Court may -

(a) call for returns from such courts;

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practising therein;

Provided that any rules made, forms prescribed or tables settled under Clause (2) or Clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

(4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating

to the Armed Forces.'

23. A plain reading of the extracted provisions shows that the power of superintendence conferred on the High Court Part-I of Article 227 is both indefinite and unlimited. The power is not subject to any limitation and is primarily designed to keep the subordinate Courts and Tribunals within the limits of their jurisdiction and correct and prevent abuse of authority of them.

24. The jurisdiction is discretionary in character and in terms of a long string of Judgments of the Supreme Court and the High Courts in the Country has to be sparingly exercised. The power being supervisory in nature its exercise is warranted only in cases where the subordinate Courts or Tribunals proceed in an arbitrary fashion or cause gross injustice that may result in an irreparable injury. The power is resorted to only in extraordinary and unusual situations where ordinary remedies provided are found to be inadequate. The very nature of the power and its scope as also the lack of any limitations on the same, impose upon the Courts an onerous responsibility to make a prudent and sparing use of the same along sound judicial lines. The exercise of the power is not a substitute for an Appellant jurisdiction nor is it exercisable only to correct an error of law except where such an error is apparent on the face of record. Suffice it to say that the power of Judicial superintendence over subordinate Courts and Tribunals is intended to ensure that the subordinate Courts and Tribunals abide by the law and exercise their jurisdiction in keeping with the letter and the spirit thereof.

25. Besides, the power to interfere on the Judicial side the High Court also exercises powers of superintendence over the subordinate Courts and Tribunals in administrative matters. This power however is subject to the limitation imposed by Proviso to Sub-rule (3) of Article 227 which requires that the Rules which the High Court may make, the Forms it may choose to prescribe or the Table of Fees it may settle in terms of part-3 of the Article shall not be inconsistent with the provisions of law for the time being in force and shall require the previous approval of the Governor. In other words, in so far as ' administrative matters are concerned, the power of superintendence is not unlimited and or unconditional in nature. Such a power is subject to the same fulfilling the dual tests prescribed by the Proviso

namely the same is not exercised in derogation of any existing law and the Rule framed and the Forms and tables prescribed have the prior approval of the Governor. This appears to be the only distinguishing feature between the content and the nature of the two powers exercisable by the High Court under this Article.

26. The impugned Circulars issued by the High Court cannot obviously be deemed to be an exercise of the powers of the Judicial superintendence exercisable by the High Court under Article 227(1) of the Constitution. The exercise of power of Judicial superintendence under Article 227(1) will require a situation where a Court or Tribunal subordinate to the High Court either exercises its jurisdiction improperly or fails or declines to exercise the same in accordance with law. If it is a case of improper exercise of jurisdiction the High Court can in exercise of its power of superintendence under Article 227 intervene and correct the path of adjudication. Similarly in case a Court or Tribunal even though required to exercise its jurisdiction in accordance with law fails or omits to do so, the Court may even in such a case intervene and issue requisite directions in exercise of its power of superintendence, compelling the Court or Tribunal to act and discharge the duty enjoined upon it by the law under which it functions. The impugned Circulars do not fit in or answer any one of these two situations, The same have therefore to be treated to have been issued in exercise of the powers of administrative superintendence of the High Court over subordinate Courts and Tribunals.

27. Two Questions arise at this stage, namely:

- (i) Does the High Court enjoy any power of superintendence on matters over and above these mentioned in Sub-article (2) of Article 227 of the Constitution and
- (ii) Does any such power extend to controlling, regulating or interfering even with matters which are within the discretion and jurisdiction of a subordinate tribunal exercising powers under a special enactment ?

28. In so far as the first of these questions is concerned, the words 'without prejudice to the generality of the foregoing provision' appearing in para-2 of Article 227 in my opinion provide the answer. These words clearly imply that the enumeration of the extent of administrative powers in part-2 of Article 227 is not

exhaustive of the said power. In other words, the administrative power exercisable is not limited to the matters set out in Clauses (a) to (c) of part-2 of Article 227. These subjects are identified for purposes of enumeration without prejudice to the generality of the powers vested with the High Court under that Article both in regard to Judicial and administrative superintendence. The source of power under Article 227(1) is available both in regard to Judicial and administrative superintendence and is not controlled by the provisions of Sub-article (2) of Article 227. It follows that the High Courts have the power of superintendence in administrative matters even in regard to subjects other than those enumerated under Sub-article (2) of Article 227. The position may have been different if the general power had followed the specific enumeration of the subjects, for in that case the Rule of *Ejusdem Generis* could be invoked to limit the general power to subjects alike or analogues to those that are specifically enumerated. This however is not so and since the Rule has no inverse application, there is no option but to hold that the specific subjects mentioned after the conferment of a general power does not prejudice or limit the general power to the specified subjects only. This is apparent even from the words used in part (2) of Article 227 itself reference whereto has been made by me earlier. My answer to Question-1 above is therefore in the affirmative.

29. That brings me to the second Question namely whether the power of administrative superintendence can be invoked so as to regulate or guide the exercise of discretion vested in a subordinate Tribunal under a special enactment, like the Motor Vehicles Act. Now it is fairly well settled that the power of superintendence whether Judicial or administrative, cannot be exercised, so as to interfere with an *intravires* exercise of discretionary power unless it is violative of the principles of Natural Justice. Refer *RAJKAMAL v. INRAM MOTION PICTURE UNION*, 1963(1) LLJ 318 nor can it be exercised to correct mere errors of law as a Court of Revision refer *WARYAM v. AMARNATH*, AIR 1954 SC 58. In other words, so long as the power being exercised by the Court or Tribunal is *intravires*, the High Court would not be justified in interfering with the same or the exercise of discretion vested in the Tribunal. This appears to be in keeping with the basic object behind the conferment of the power, which, no matter is wide in its amplitude, is all the same not wide enough to be exercised for the purposes of

interfering with what the Tribunals are entitled to do within the legitimate limits of their jurisdiction. There is therefore a need for the High Court to be extremely careful and reluctant in issuing Guidelines in the exercise of its powers of superintendence for such Guidelines coming from the High Court, would be treated with the same reverence by the subordinate Courts and Tribunals as would be due to a command issued by it. This would mean that the Tribunals would instead of exercising their own discretion in the matter which a statute or a statutory notification may confer upon them, wholly abdicate in favour of the Higher wisdom of the High Court. They will become mere post offices mechanically operating the mechanism without independent thought or judgment, simply to obey what the High Court may have asked them to do, under the thin veil of what is said to be a Guideline but what in fact is a Mandamus issued to them. Such a situation, can hardly be countenanced or accepted as an ideal state of affairs let alone a prudent and Judicious exercise of the power reserved with the High Court under Article 227. The principle is well settled that if an authority is vested with a certain power, then the exercise thereof is also left with the authority alone. It cannot of its own, abdicate in favour of another authority no matter higher in status and better of in wisdom, nor can the higher authority impose its will upon the subordinate, howsoever infallible the judgment of the former may be.

30. Let us now see the two Circulars issued by the High Court that has invoked such a sharp reaction both from the Bar as also the litigants. The first Circular while forwarding the statutory Notification issued by the Government to the Tribunals informs them that all claims cases pending on the file of the Motor Vehicles Claims Tribunals shall be transferred to the Additional Motor Vehicles Claims Tribunals constituted as per the Government Notification. The Circular uses the word 'shall also be transferred' which adds a touch of command and apparently leaves little to the discretion of the Motor Vehicles Claims Tribunals. In the second Circular, the Tribunals have been asked to follow the Guidelines set-out therein while exercising jurisdiction in the matter of transfer of pending Claim Petitions. The Guidelines state that all the Claim Petitions in which the evidence has been recorded and the arguments already heard or in which the evidence is recorded and the matters are posted for arguments shall be disposed of by the Motor Accidents Claims Tribunals before which they are pending. In respect of

other Claim Petitions in which the evidence is yet to commence the Guidelines direct the same to be transferred to the Additional Motor Vehicles Claims Tribunals constituted under the Notification in question. What is significant is that, paras-1 to 4 of the second Circular which even though purport to be only Guidelines, are in substance, directions issued to the Tribunals to exercise their discretion in a particular fashion while transferring the Claim Petitions filed before them. It cannot be, disputed that Guidelines contained in paras-1 and 2 of the 2nd Circular directing the cases in which the arguments have already been heard or evidence is already completed should be decided by the respective Tribunals before which they are pending, can hardly be found fault with. The petitioners also had no grievance to make in so far as these two Guidelines were concerned. What however, came under severe criticism are the Guidelines issued in para-3 and 4 which it was urged, left no choice for the Tribunals except to do what was directed by the High Court to be done in the matter of transfer of pending cases.

31. Learned Government Advocate appearing on behalf of the respondents submitted that the transfer of the Claim Petitions has to be ordered after following the procedure as per Rules as mentioned in the first Circular of the High Court and that the said expression clearly left the matter to the discretion of the respective Motor Vehicles Accidents Claims Tribunals to determine whether or not to transfer the pending Claim Petitions to the Additional Tribunals constituted under the impugned Notification. He further submitted that this was true even in respect of the second Circular which simply provided the Guidelines without in the least affecting the discretion vested in the Tribunals one way or the other. He filed an additional statement of objections in which it is pointed out that there was no intention on the part of the High Court to affect the discretionary jurisdiction vested in the District Judges in the matter of transfer of cases under the Government Notification, and that the Circulars only contained Guidelines which cannot be deemed to be directives to the Tribunals.

32. The power to transfer business exercisable by the Tribunals is statutory in nature. The said power owes its origin to the Notification issued by the Government under Section 165(3) of the Motor Vehicles Act. The Government has by issuing the said Notification indicated the matters to be taken into consideration

by the Principal Motor Vehicles Tribunals while transferring the Motor Vehicles Accident cases to the Additional Tribunals. The Notification provides that the Principal District & Sessions Judge shall transfer the Claim Petitions to the Additional Motor Vehicles Claims Tribunals depending upon the area of civil jurisdiction exercised by the Judges and as otherwise deemed prudent in the interest of speedy disposal of such claims. The decision as to what would be a prudent order in the matter of transfer of pending Claim Cases and how can the speedy disposal of the claims be ensured has been left to the discretion of the District Judges. While exercising the said discretion it is for the District Judges to decide and take into consideration the facts and circumstances of each case that is placed before them as to whether the case should or should not be transferred and if transferred, to which Additional Tribunal. It was open to the Government to have prescribed any additional norms that may be required to be followed by the Tribunals while exercising the power of transfer. This has not, however, been done except using the expression 'deemed prudent in the interest of speedy disposal of such claims'. That being so, it appears to me as though the Circulars issued by the High Courts make an addition to the Notification in question by prescribing the tests and Guidelines to be adopted by the Tribunals while transferring the pending Cases. This addition is impermissible in law, I say so for two reasons. Firstly because the power to regulate the distribution of business among the Tribunals being a statutory function it is only the Government who can exercise the same. The High Court cannot in the form of Circulars provide for a matter which legitimately falls within the purview of the authority designated by the statute. In other words what cannot be done by the High Court directly cannot also be done by it indirectly in the guise of an administrative Circular. Secondly because the power of administrative superintendence cannot be exercised so as to clutch at the jurisdiction vested in the Tribunals in terms of the statutory Notification issued by the Government. Any administrative action, (be that a simple Circular or a Guideline couched in words that are mandatory in their implications), which has the effect of controlling, in a strait jacket formula the discretion vested in the Tribunals would be *ultra vires*, and offensive to the well settled Rule that the power vested in an authority whether Judicial or otherwise, can and ought to be exercised only by the authority in whom the power is vested uninfluenced by any

factor extraneous to the legitimate exercise of the said power. This position is well settled by a number of Supreme Court Judgments starting with its Judgment in COMMISSIONER OF POLICE BOMBAY v. GORDHANDAS BHANJI, : [1952]1SCR135 in which Case the Supreme Court struck down an order purported to have been passed by the Commissioner of Police, in exercise of his powers under the Bombay Police Act, as the order in question was in fact made by the Government who had no authority under the Act to do so or arrogated to itself the powers that were vested in the Police Commissioner.

33. The Rule laid down in the above Case was reiterated in State of Punjab v. Hari Krishna wherein the Court held that the State Government was not justified in assuming jurisdiction which had been conferred on the licensing authority by Section 5(1) and (2) of the Punjab Cinema Regulation Act. In The Purtabpur Company Ltd. v. Cane Commissioner of Bihar and Ors. an order passed by the Cane Commissioner in exercise of the power delegated to him by the Central Government was quashed by the Apex Court, as the said order has been passed by the Cane Commissioner in accordance with the directions issued to him by the Chief Minister. The Court held that the Chief Minister was not justified in interfering with the functions of the Cane Commissioner as a statutory authority, under the Sugarcane Control Order and any order passed by the latter at the instance of the former vitiated such an order. Relying upon its earlier Judgments reported in : [1950]1SCR621 , : [1960]2SCR775 and : AIR 1962 SC1110 , the Court held that the proceedings before the Cane Commissioner are quasi judicial proceedings, and the manner in which the power conferred upon the Commissioner was to be exercised would depend upon the express provisions of the Statute, the nature of the rights and the manner of disposal provided, the objective criteria if any to be adopted and the effect of the decision on the persons affected.

34. In Ramji Sharma v. High Court of M.P. Jabalpur and Ors. a Memorandum issued by the High Court of M.P. was called in question on the ground that the same was destructive of Statutory Notification issued by the Government in exercise of its powers under Section 35 of the Court Fees Act remitting in whole the Court fee mentioned in Article 1 (a) and 2 of the I Schedule of the Act, payable on plaints by the specified category of persons whose annual income immediately

preceding the date of presentation of plaint from all sources did not exceed Rs. 60,000/-. Notwithstanding the Notification, the Memorandum issued by the High Court addressed to the District Judges informed them that the procedure prescribed for suits instituted by 'Indigent Persons' under Order 33 Rule 1 to 8 read with Section 141 of C.P.C. should be followed in all cases instituted by persons seeking exemption from payment of Court fee under Notification in question. A Division Bench of the High Court while quashing the Memorandum held that the force and effect of a statutory Notification like the one issued by the Government in the said Case could not be impaired even by a Rule framed under Article 227(2) of the [Constitution of India](#). The Court held that the effect of a statutory Notification could not be nullified in the process of regulating the procedure of any Civil Court subordinate to the High Court and that the Memorandum in question was not saved either by Article 225 or Article 235 of the Constitution.

35. The Government Advocate however urged that since the High Court never intended to interfere with the exercise of the discretion vested in the Tribunals in the matter of transfer of Cases and since the said position has been made clear in the additional objections filed, this Court need not interfere with the Circulars. It is true that in the additional objections, the High Court has stated that the Circulars were never intended to interfere with the exercise of the discretion vested in the Tribunals, yet in my opinion, such a statement can hardly allay the apprehension of the petitioners that the Tribunals will always feel constrained to strictly adhere to the so-called Guidelines while exercising their power of transfer. The very possibility of the Tribunals' discretion in the matter of transfer of Cases, being restricted or confined to the options given in the Circulars issued by the High Court, is in my opinion sufficient for this Court to intervene and clear the clouds cast upon the powers of the Tribunals vested in them in terms of the Notification in question. In the interest of a fair and an objective consideration of the relevant factors, by the Tribunals concerned unhindered by any Guidelines or Circulars issued by the High Court, I consider it necessary that instead of allowing the Circulars to stay, subject to the condition that they shall only be Guidelines and nothing more, it is better to get rid of the Circulars, themselves so as to leave the Tribunals completely free to determine in each Case, the question whether the

same should or should not be transferred on its merits and according to the best of the tribunals' judgment.

36. Before parting however I must advert to two more aspects that were argued by the petitioners. It was contended that the impugned Notification does not provide for transfer of pending Cases, and therefore the Tribunals were not required to transfer the Cases that were pending on the date of the issue of the Notification. I do not however find any substance in this argument. The method of distribution of business, is a procedural matter, and it is well settled that a provision regulating the procedures to be followed by a Tribunal or Court is always retrospectively in the sense that it applies even to the pending cases. Reference in this connection can be made to MUKUND DEO (DEAD) REPRESENTED BY HIS LEGAL REPRESENTATIVES KASIBAI AND ORS. v. MADHADU AND ORS., : AIR 1965 SC703

37. It was next argued that the second Circular issued by the High Court was incompetent as the same was not supported by any Full Court Resolution approving the Guidelines contained in the Circular. From the record produced before me by the Government Advocate, it appears that a Committee headed by K.B. Navadgi J., as his Lordship then was, was constituted in terms of a Full Court Resolution passed on 1st September 1994. The Committee submitted its Report dated 15th September, 1994 which was approved by the Full Court in its Meeting held on 29th November 1994. It is significant that the Report of the Committee which came up for approval before the Full Court did not contain any Guidelines for circulation among the Tribunals. The question of the Full Court approving any such Guidelines therefore did not arise. Much after the Report submitted by the Committee, had been approved by the Full Court and the Committee had thereby become functus officio as nothing further was required to be done by it, Justice Navadgi, appears to have addressed a letter dated 16th May, 1995 to the Hon'ble Chief Justice proposing the Guidelines for being circulated among the Tribunals in the matter of transferring the Cases. A note is then put up to Hon'ble Acting Chief Justice on the basis of the above letter on which the Acting Chief Justice passes an order on 19th May, 1995 authorising circulation of the Guidelines suggested by Justice Navadgi.

38. The Guidelines suggested were as a matter of fact never placed before the Full Court nor were there Guidelines a part of the Report submitted by the Committee and approved by the Court in its Meeting held on 29th of November, 1994. The Guidelines were for the first time proposed in Justice Navadgi's letter dated 16th May, 1995 and it is not disputed that there was no Full Court Meeting held for consideration of the said Guidelines at any time between 16th May and 29th May 1995 when the Hon'ble Acting Chief Justice approved the issue of the Circulars containing the Guidelines. It is therefore manifest that the Guidelines in question did not have the approval of the Full Court and consequently could not be said to be an action taken by the High Court in exercise of its administrative powers. Mr. Ullal, was unable to point out any provision under which the Hon'ble Acting Chief Justice could direct the circulation of the Guidelines in question without having the same approved by this Full Court. That apart, the second Circular issued by the Registrar General purports to have been issued for and on behalf of the High Court and unless it is demonstrated that such Guidelines could be issued even in the absence of a proper Resolution by the Full Court, the same must be held to be incompetent, I may however hasten to add that the error appears to have crept in on account of the failure of the office to point out to the Hon'ble Acting Chief Justice that the Guidelines in question, had never been approved by the Full Court. I have gone through the note prepared by the office for the perusal of the Acting Chief Justice and I find that this aspect of the matter has not been brought out in the note. Indeed if the note had pointed-out that the guidelines proposed by Justice Navadgi, in the enclosure to his letter dated 16th May, 1995 had never been considered or approved by the Full Court the Hon'ble Acting Chief Justice may not have approved the circulation of the Guidelines without the same being first placed for the approval of the Full Court in a proper Meeting. Consequently the Guidelines framed and circulated under the second Circular issued by the High Court, must be held to be bad even for this additional reason also.

39. In the result these Writ Petitions are allowed but only in part and to the extent that Circulars dated 6th April 1995 and 29th May 1995 issued by the Registrar General of the High Court, are hereby quashed. As a consequence, the Motor Accident Claims Tribunals shall be at liberty to exercise their power of transferring

Claim Cases both pending as also those that may be instituted in future in accordance with the Statutory Notification dated 30th March 1995 issued by the Government under Section 165 of the Motor Vehicles Act 1988, uninfluenced by the contents of the Circulars in question. In the peculiar circumstances of the case however the parties shall bear their own costs.

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