



! AFFIXED AT INDOR. B. Hon'ble Shri Justice R.D.Shukla & Hon'ble Shri Justice J.G.Chitre.

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L.P.A.No.155/96

Manager, Kedia Distillery Bhilai.

v.

Chairman/President S.I.C. & Others.

O R D E R

Per R.D.Shukla,J.

This order shall also govern the proceedings of LPA.No.156/96, LPA No.162/96 and LPA No.163/96.

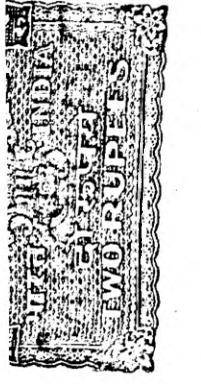
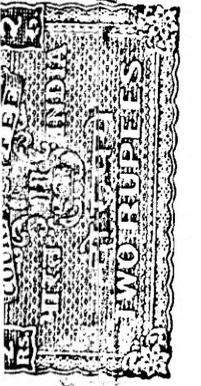
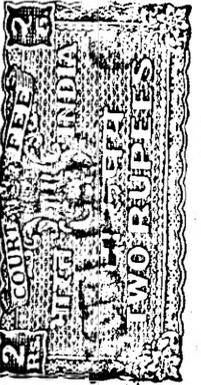
1. Brief history is that W.P.No.1231/95 was filed challenging the References made by the State Government on 31.5.95.

2. Present appellant was also one of the petitioners alongwith other persons. Some of whom have filed appeals and some of them have been shown to be proforma respondents. Initial reference under challenge has been enumerated on page No.2 of the order of learned Single Judge dated 27.9.96 passed in W.P.No.1231/95. The same has been shown on page 2 of the proposed judgment of one of us (Justice R.D.Shukla).

3. During pendency of the petition reference No.4 was made by State Government vide order dated 27/31-7-95. The same has been shown in the LPA judgment and the order of learned Single Judge as well. Learned Single Judge dismissed the petition holding it to be that the State Govt. has powers to make reference U/s.51 of the M.P.

Industrial Relation Act and as the powers are executive in nature administrative authority need not give reasons for decision unless the rule so requires and as Sec.51(1) of the Act does not provide for assigning reasons, the reference is legal and valid.

4. Nos. 155 and 156 of 1996 were filed and



the judgment of learned Single Judge, as more than one
! AFFIXE petitions were decided by a common judgment no appeal filed
by the State Government.

5. One of us (Justice R.D.Shukla) held that the references No.1 to 3 have rightly been made and are within the powers of the State Government. With respect to Reference No.4 it was held that the same was without jurisdiction as it was made during the pendency of the case in the court and without hearing the other party. As such, the same was proposed to be quashed. One Judge of the Division Bench (Justice J.G.Chitre) did not agree with the judgment and held that the Indore Bench of High Court has no jurisdiction to entertain the petition even with respect to References No.1 to 3.

6. In view of above, difference of the opinion of two judges the matter was laid before the Chief Justice who directed the case to be referred to third Judge (Justice A.R.Tiwari).

7. Let third judge concurred with the judgment of Justice J.G.Chitre with respect to jurisdiction and further held that in view of provisions of sec.17() of M.P.I.R.Act interim relief was necessary and therefore Reference No.4 has also been rightly and correctly made.

8. Objections has been raised by learned counsel for appellants challenging the propriety and legality of opinion expressed by Hon'ble Judges. as such, we heard the matter again on the point of objection.

9. Learned counsel for appellant Shri ... has submitted that the impugned judgment of learned Single Judge does not hold that the Indore Bench of M.P. High Court has no jurisdiction and decided the case holding it to be that



the State Govt. had power to make reference U/s.51(1) of the M.P. Industrial Act. As such, virtually it has been held that the ^{DOBE} Indore Bench of this ~~the~~ High Court has jurisdiction over the matter as the reference was under consideration of the Industrial Court situated at Indore and in view of this provision under Art.226 of Constitution and Section 20 of Code of Civil Procedure, a part of cause of action arose at Indore and, therefore, it was rightly held that this court has jurisdiction.

10. There was no challenge to judgment of learned Single Judge on the point of jurisdiction.

11. It is, then submitted that one of the judges of the Division Bench (Justice R.D. Shukla) held that the Court has jurisdiction. Since the point of jurisdiction was not raised and, therefore, it was not open for the other Hon'ble Judge to have decided the matter on the point of jurisdiction.

12. It is then submitted that the difference of opinion was only with respect to point of jurisdiction and not with respect to legality and propriety of reference No.4 which was proposed to be quashed by one Judge of the Bench. Thus, the judgment of third judge on the point of legality of Reference No.4 was not called for.

13. Learned counsel has referred to a Full Bench decision of this court as reported in 1966 J.L.J. 842 (The Amalgamated Coalfields Ltd., Calcutta and others v. The State of M.P. and another) with special reference to para 49 and ~~an~~ other Full Bench decision as reported in 1977 J.L.J. 641 - (Ladhuram Rameshwardayal Firm v. Krishi Upai Mandi Samiti Shivnuri).

14. As against it learned counsel appearing for respondents have submitted that as the third judge has concurred with one of the judges with respect to jurisdiction

the L.P.A. deserve to be dismissed.

15.

Letters Patent appeal is an intra court appeal.

While passing orders in LPAs, the High Court corrects its own order. Learned Single Judge who initially decided the petition has not accepted the arguments of respondents challenging the jurisdiction of the Court. Respondents here have not raised any dispute by filing an appeal challenging the jurisdiction. Thus, the point of jurisdiction with respect to references was not at issue. The deferring Judge has expressed opinion with respect to legality and propriety of reference No.4. Thus, what comes out is that if it is held that the order has jurisdiction there was no difference of opinion between the two judges on the point of Ref.No.4. In such a situation no order was called for by the third Judge on that point.

" When on a difference of opinion between two judges constituting a Division Bench, a matter is referred to a third Judge, the third Judge can only express his "opinion" on the "point" on which the Judges are divided in opinion. However, the third Judge cannot "decide" that point. (He has to leave to the Division to "decide" the point as directed under Clause 26 of the Letters Patent). Nor can he enter into any other point on which the Judges of the Division Bench were not divided in opinion. If the third Judge expresses his opinion on any other point or finally decides the case as whole, the latter part of his opinion (be it styled as 'order' or 'judgment') has to be ignored as without jurisdiction. After the third judge has recorded his opinion, the case must be laid before the Division Bench for deciding the point or points which were referred to the third Judge according to the method provided by Clause 26 of the Letters Patent and it is at this stage that a Division Bench will finally decide the case before it. It is not the requirement of law that the case must be laid before the same Division Bench which first heard it after it is returned by the third Judge. When one of the Judges constituting the Division Bench which first heard the case, has retired or is not otherwise available, the Chief Justice can constitute another Division Bench to decide the case according to the method provided by Clause 26 of the Letters Patent. "





INDORE 16.

In this case as learned Single Judge has not decided against the jurisdiction and decided the case on merit and the same was not challenged and, therefore, the point of jurisdiction could not be raised at this stage.

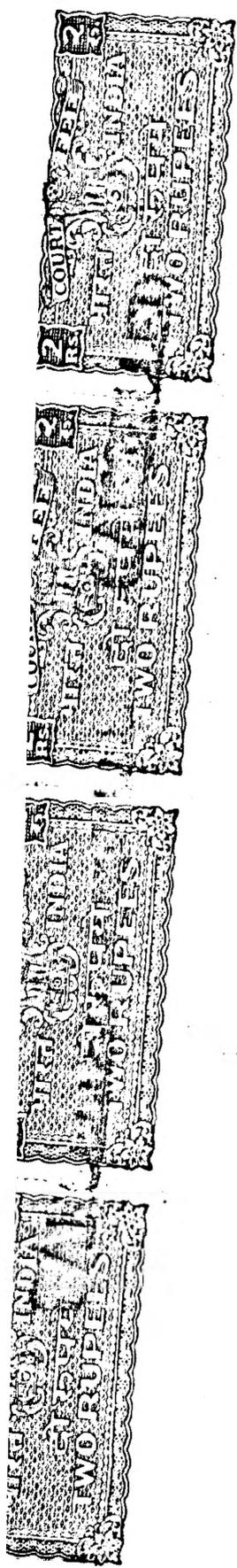
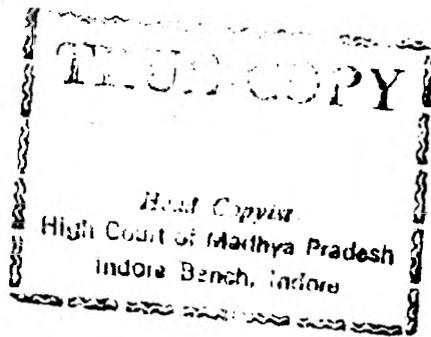
17. Secondly even if the difference of opinion is taken to be on the point of jurisdiction the third Judge has no power to pass any order on a matter where no difference was expressed.

18. In view of above, the matter be placed before the Hon'ble Chief Justice for passing appropriate order i.e. either for constituting a larger Bench or for referring the matter to other Division Bench.

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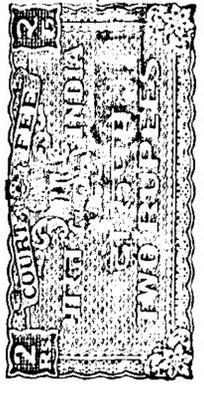


- 1. L.P.A. 155/96.
- 2. L.P.A. 156/96.
- 3. L.P.A. 162/96.
- 4. L.P.A. 163/96.

Manager, Kedia Distillery Bhillai vs. Chairman/President S.I.G. & ors.

O R D E R

Per J.G.Chitre.J.



I do not agree with the reasons given by my brother R.D.Shukla.J. justifying his conclusion that this matter be placed before Hon.the Chief Justice for passing appropriate order i.e. either for constituting a larger bench or for referring the matter to other Division Bench. Considering the opinion of brother R.D.Shukla.J. in deciding above mentioned L.P.As. , the opinion expressed by me while deciding above mentioned L.P.As. and the opinion expressed by brother A.R. Tiwari.J. and considering the Letters Patent constituting a High Court of judicature at Nagour which is the basis of constituting the present High Court of M.P. State of which we three are also judges, according to me the ultimate result is that as per concurrent view of myself and brother A.R.Tiwari. J., all these L.P.As. stand dismissed on account of want of jurisdiction of this bench to decide the subject matter of challenge in above mentioned LpP.As. What this Bench is to do is to pass the ultimate order that "in view of concurrent judgments of A.R.Tiwari.J. and J.G.Chitre.J. (1) L.P.A.155/96, (2) L.P.A. 156/96 (3) L.P.A. 162/96 (4) L.P.A.163/96 stand dismissed"

J. G. Chitre
 JUDGE
 3-4-1998.