Shephali

REPORTABLE

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION WRIT PETITION (L) NO. 20397 OF 2021

1. **Vasudev Darra**
   Having his address at Room No. 5, Bldg. No. 392 & Room No. 4, Bldg 391, Ground Floor, Multani Chawl, Umed Ashram Lane, SV Road, Borivali (W), Mumbai - 92

2. **Rajendra Laheja,**
   Having his address at Room No. 06 & 07, Bldg. No. 392, Ground Floor, Multani Chawl, Umed Ashram Lane, SV Road, Borivali (W), Mumbai – 92.

3. **Ranjeet Ramchand Bathija,** Heir of Shilu Bathija
   Having his address at Room No. 14, Bldg No. 392, First Floor, Multani Chawl, Umed Ashram Lane, SV Road, Borivali (W), Mumbai - 92

4. **Ravi R Chhabria,**
   being the heir and Legal Representative (of late Janki Nichani) having his Address at Room No. 04, Bldg. No. 392, Ground Floor, Multani Chawl, Umed Ashram Lane, SV Road,

Borivali (W), Mumbai - 92

5. **Maya Hargundas Hasrajani,** Heir of Sushila Daulatram Wadhawa, Having her address at Room No.: 15 & 16, Bldg. No. 392, First Floor, Multani Chawl, Umed Ashram Lane, SV Road, Borivali (W), Mumbai - 92

6. **Sanjay R Chhabria**
Heir and legal Representative of IshaDevi Alias Iswari Devi having her address at Room No.: 03, Bldg. No. 392, Ground Floor, Multani Chawl, Umed Ashram Lane, SV Road, Borivali (W), Mumbai - 92

7. **Lata R Chhabria** being the legal heir and Legal Representative of Lilavati Hinduja, having her address at Room No. 05 & 06, Bldg. No. 391, First Floor, Room No. 07 & 08, Bldg. No. 390, First Floor, and Room No. 04, Ground Floor, Bldg No. 393, Multani Chawl, Umed Ashram Lane, SV Road, Borivali (W), Mumbai - 92

8. **Mukesh V Hiranandani** Having his address at Room No. 07, Bldg No. 393, Ground Floor, Multani Chawl, Umed Ashram Lane, SV Road, Borivali (W), Mumbai - 92

…Petitioners

~ versus ~

1. **The Registrar General,**
Hon'ble Bombay High Court,

High Court Building, Fort, Mumbai

2. **The Master & Asst. Prothonotary (Adm.),** O.S. Writ Petition Department, Bombay High Court, PWD Building, Fort, Mumbai

3. **Aakar Infraprojects Pvt Ltd,**

   A Private Limited Company duly incorporated under the provisions of Company Act 1 of 1956 and having its address at Shangri-La Apts, LT Road, Borivali (W), Mumbai 400092.

4. **Kiran Amubhai Shah,** Of Mumbai, Indian Inhabitant,
   A Director of Petitioner 1 above named having its address at Shangri-La Apts., LT Road, Borivali (W), Mumbai 400 092

...Respondents

WITH
INTERIM APPLICATION NO. 2326 OF 2021
IN
WRIT PETITION (L) NO. 20397 OF 2021

APPEARANCES

for the petitioner	**Mr Vijay Kurle**, *with Samkit Shah.*
for respondents nos. 1 & 2	**Mr SR Nargolkar.**
for respondent no.3	**Mr Anuj Desai**, *i/b DM Legal Associates.*
registrar (writ) present	**Mrs Pooja Bhaidkar.**

CORAM : G.S.Patel &
Madhav J Jamdar, JJ

DATED : 2nd December 2021

ORAL JUDGMENT (*Per GS Patel J)* **:-**

1. Is the power of the Chief Justice of a High Court, as the Master of the Roster, constrained by the present sitting assignment or roster and any directions contained in it? Is an order of the Chief Justice, again in his capacity as the Master of the Roster, assigning a class of matters or even a single matter to a particular Bench justiciable and subject to judicial review? Once a roster is published with certain directions, is the Chief Justice's power to assign any particular matter limited or restricted by those directions? These are some of the questions that are placed for our consideration in this Writ Petition filed under Article 226 of the Constitution of India.

2. The factual background is not contentious. The eight Petitioners are all respondents in Writ Petition No. 2364 of 2015, (*Aakar Infra Projects Private Ltd & Anr vs MCGM & Ors*; "**the Aakar Infra Petition**") Petitioner No. 1 is respondent No. 6. Petitioners Nos. 2 to 8 are, respectively, respondents Nos. 7, 9(a), 10, 11(a), 12(a), 14 and 15. The present Respondents Nos. 3 and 4 are the two petitioners in that Writ Petition.

3. We are not concerned with the merits of that litigation at all. On 21st September 2020, the Division Bench hearing the Aakar

Infra Petition made an order. At that time, there was a Chamber Summons (L) No. 442 of 2015, a Notice of Motion No.385 of 2018 and an IA No. 2415 of 2020. The Court said that on 19th December 2019 the Aakar Infra Writ Petition along with the Notice of Motion and Chamber Summons were heard finally and the matter was reserved for orders. The order went on to say that although judgment was ready by March 2020 it could not be pronounced because of the pandemic and the lockdown. The petitioners, i.e., Aakar Infra and the present 4th Respondent, filed a praecipe in September 2020 pointing out that judgment had not yet been pronounced. For that reason, the entire group was listed before the Division Bench on 19th December 2019 to enquire from the Advocates whether they wish to reiterate their submissions.

4. It seems that respondent No. 14 in the Aakar Infra Petition (the present Petitioner No. 7, Lata Chhabria) had changed advocates. In the 2020, Lata Chhabria's new Advocate, Ms Kruti Bhavsar, filed an Interim Application raising a point of maintainability of the Aakar Infra Writ Petition. That IA had not been served until 19th December 2019. Ms Bhavsar had then filed another IA under Section 340 of the Code of Criminal Procedure 1973 ("**CrPC**") in which Mr Vijay Kurle, learned Advocate of this Court, was appearing as an Advocate. Even that IA was not served. Ms Rama Subramanium, learned Advocate, also informed the Court 19th December 2019 that she was appearing for respondent No. 6 in that matter (Raj Kumar Hinduja). She had on his behalf, filed a Notice of Motion (L) No. 586 of 2018 which had not been disposed of and was pending. That Motion was for impleadment. The Court pointed out that since the applicant, Hinduja, was already a

respondent, such a Motion was not maintainable or even necessary. At that point, perhaps due to some confusion, Ms Subramanium pointed out that applicant was not, in fact, respondent No. 6 but was a party yet to be joined to the proceedings. That party had filed Chamber Summons (L) No. 528 of 2018 and his name was Sandeep Deshmukh. It was found that Deshmukh's Chamber Summons had already been dismissed departmentally for non-removal of office objections. That happened earlier on 22nd February 2019. The Court was moved to make certain observations but ultimately deferred the pronouncement of its final judgment and order. It directed Ms Bhavsar to forward copies of her two IAs to the Advocates for the petitioners and the other respondents. The Court gave time to the Petitioners and all parties to file responses to the IAs taken out by Ms Bhavsar and the matter was stood othe9th October 2020. Then, on 28th October 2020, the matter was adjourned to 27th November 2020. On that date, it was decided that the matter would be heard physically. The Court then adjourned the hearing to 14th January 2021.

5. The order of 14th January 2021 sets out the order of 21st September 2020 almost in its entirety and then notes the dates of adjournments. In paragraph 3 of the 14th January 2021 order, the Division Bench observed:[1]

> Today, the learned Advocate appearing for Respondent No. 14 who had on 6th September 2020 submitted that we should not pronounce the final order/judgment in the Writ Petition since certain interim applications are subsequently taken out and we should first hear the same finally, **now**

1 2021 SCC OnLine Bom 2279.

> **states that this Court should not hear the above matters at all since the Writ Petition itself, as per the current assignment should be before the bench headed by the learned Chief Justice. In view thereof, office to place a copy of this Order before the learned Chief Justice and obtain necessary directions in the above matter.**"
>
> (*Emphasis added*)

6. As we can see, the submission made on 14th January 2021 was that the roster having changed, the matter was not within the assignment of that Division Bench. The submission was that the assignment should be before the Bench headed by the learned Chief Justice, to which Bench matters of this class stood assigned as per the then extant roster. The Bench directed the office to place the copy of its 14th January 2021 order before the Chief Justice for necessary directions.

7. It is not in dispute that the office did so. On 18th January 2021, the Hon'ble the Chief Justice in a handwritten endorsement, indicated that the Aakar Infra Writ Petition and all interlocutory applications be placed before the same Division Bench, i.e., not before the Bench he headed but the one that had passed the order of 14th January 2021.

8. The administrative direction of 18th January 2021 of the Hon'ble the Chief Justice is not under challenge in the present Writ Petition.

9. On 10th February 2021, respondent No. 14 to the Aakar Infra Petition i.e., Petitioner No. 7, before us today, through its Advocate, Mr Kurle filed a formal written application seeking that the matter be assigned to the 'regular Bench'. A copy of this application is at Exhibit "F" to the present Writ Petition at pages 41 to 57. This is styled as a 'presentation for transfer of assignment' or 'presentation for transfer of Petition'. The specific application was that the Aakar Infra Writ Petition be directed by the Chief Justice in exercise of his powers as the Master of the Roster be placed before the Bench of 'regular assignment'. There is no controversy that this expression 'regular assignment' was intended by Mr Kurle and his client to mean, and was understood by all to mean, the Bench before which such classes of matters were assigned as per the roster published, in existence and operational from January 2021 or, at any rate, on the date of the application, 10th February 2021.

10. The application said that the Writ Petition was at the stage of pre-admission. We are not concerned with the contentions on merits. A specific ground taken was that Mr Kurle's client's applications for maintainability and under Section 340 of CrPC were yet pending a hearing; hence the matter was not 'finally heard' by any Bench. In ground (d) it was pointed out that a Chamber Summons by the original property owner was also pending. But the substance of the representation may be found in ground 'b' at pages 43and 44. It reads thus:

> "b. Secondly, as required under the same procedure laid down in the clause 13 of the Sitting List that ***'if all the parties to the proceedings make a joint written request for retention of the matter before the Hon'ble Court which had***

> ***partly heard the matter before the change of roster and if the Hon'ble Court endorses such request, the Registry would place the matter before the Hon'ble Chief Justice after verifying the record. Upon acceptance of such proposal by Hon'ble the Chief Justice, such part Heard matter shall be assigned to the Hon'ble Court which had endorsed the joint written request of all parties to the proceedings.'*** It is pertinent to bring into the notice of your Honour's Court/Authority that there is no such **'JOINT WRITTEN REQUEST'** made by any of the parties for retention of the matter before the Hon'ble Court of Justice Shri. S. J. Kathawalla and Justice Shri. B. P. Colabawalla and on the very ground itself the instant Writ Petition required to transfer and place before the Hon'ble Bench of Regular Assignment, i.e., the Bench of Hon'ble Chief Justice and Hon'ble Justice Shri. G. S. Kulkarni."
>
> (*Emphasis in the original*)

11. This application made through Mr Kurle on behalf of respondent No. 14 to the Aakar Infra Petition (present Petitioner No. 6) was placed before the Chief Justice. Prayer (a) in that application was that the matter be placed before the First Court, the Bench of the Hon'ble the Chief Justice and GS Kulkarni J, which had the regular assignment. The application itself was placed by the Registry as a submission before the Hon'ble the Chief Justice for directions on:

> "(a) whether the Writ Petition and the IAs be placed before the regular bench as per the extant assignment of judicial work or;
>
> (b) whether the application dated 10th February 2021 by the Advocate of Respondent No. 4 may be rejected and he be informed accordingly."

12. On this office submission, the Hon'ble the Chief Justice endorsed his direction in handwriting on 2nd March 2021. The direction was to reject the application by indicating the second option (*b*) referred to above.

13. Mr Kurle was informed by email on 3rd March 2020 that his application for transfer of the Aakar Infra Petition to the "regular bench" had been rejected by an administrative order dated 2nd March 2021. Mr Kurle responded on 17th March 2021 by email asking for a digital PDF copy of the administrative order. His request was declined the very same date. These emails are set out Exhibit "B" at page 30.

14. This order of 2nd March 2021 is under challenge in the present Writ Petition. The prayers in the Writ Petition at page 17 read thus:

> "a. This Hon'ble Court be pleased to call for records and proceedings on the file of the Respondent Nos. 1 & 2 in respect of issue of the impugned Administrative Order dated 02/03/2021.
>
> b. This Hon'ble Court be pleased to issue appropriate writ and quash and set aside an impugned Administrative order dated 02/03/2021 issued by the Hon'ble Chief Justice on misrepresentation by the Respondent Nos. 1 & 2.
>
> c. This Hon'ble Court during pendency of the instant Writ Petition be please to stay operation of the impugned Administrative order till final disposal of the instant Writ Petition."

15. Grounds 5(a) and 5(b) of the Petition are, in our assessment, central to the case presented by Mr Kurle for our consideration. These two grounds at pages 9 to 11 read thus:

> "a. That it is crystal clear from the Standard Operating Procedure laid down in the sitting list at clause 13 of the list that;
>
> > ***'Upon change of roster, part Heard matters shall stand released and shall be placed before the Hon'ble Court as per the roster. However, if all the parties to the proceedings made a joint written request for retention of the matter before the Hon'ble Court which had partly heard the matter before the change of roster and if the Hon'ble Court endorses such request, the Registry would place the matter before Hon'ble the Chief Justice after verifying the record. Upon acceptance of such proposal by Hon'ble the Chief Justice, such part heard matter shall be assigned to the Hon'ble Court which had endorsed the joint written request of all the parties to the proceedings.'***
>
> b. That after perusal of the procedure (SOP) laid down as above it is evident and clear that in case if any matter is partly or fully heard and the same is required to be retain before the same Hon'ble Court after change of roster, then in that case Parties to the proceeding have to make written representation with consent of all the parties to the Hon'ble Court which matter has been partly or fully heard and it that Hon'ble Court endorses the said written representation, the Registry would place the matter before Hon'ble Chief Justice after verifying record. It is pertinent to bring into the notice of his Hon'ble Court that there was no such **Joint Written Request** or representation from any

> of the party in the Writ Petition to be retained with bench of Hon'ble Justice Shri. S. J. Kathawala and Justice Shri. B. P. Colabawala. The bench of Hon'ble Justice Kathawala and Justice Colabawala suo moto directed the registry to place this before the Chief Justice by order dated 14.01.2021 in the said Writ Petition giving false and frivolous observation about the stage and status of the writ petition to seek an Administrative Order from the Hon'ble Chief Justice for retention of the matter with themselves. Even registry did not verify the record as required and binding upon them and place the said order dated before the Hon'ble Chief Justice and initially sought an Administrative Order dated 18.01.2021 for retention of Writ Petition before the bench of Justice Shri. Kathawala and Justice Colabawala. The very action of the Hon'ble Court and the registry is completely against the Standard Operating Procedure (SOP) laid down for change of roster and is completely against the Judicial Discipline that is required to be maintained. **Copy of order dated 14.01.2021 is hereby annexed and marked at Exhibit – E.**"

16. Mr Kurle has placed several authorities for our consideration. His submission is that the Chief Justice of a High Court, though vested with the power to make and publish a roster, is bound by the terms of the roster. This means not only the segregation of judicial work between various benches but also an adherence to any specific terms and conditions that are part of the roster. Specifically, where there is an established protocol, what Mr Kurle calls an SOP or Standard Operating Protocol, for declaring a matter to be part-heard, the Chief Justice, no matter how wide or expansive his administrative powers as the Master of the Roster, cannot deviate from that protocol. To permit a deviation would, in Mr Kurle's

submission, lead to an unthinkable or chaotic situation where matters could randomly be assigned to this or that Bench without any accountability and without any transparency. The published SOP has a definite purpose. Plainly read, he submits, it requires three things. (i) that all sides must consent in writing to the matter being treated as part-heard, (ii) the Bench in question must also agree that it be treated as part-heard and, (iii) that the Chief Justice must thereafter exercise his discretion to indeed have the matter treated as part-heard before that Bench.

17. Mr Kurle is careful to point out that it is not his submission that the Chief Justice is bound to treat the matter as part-heard even if the parties consent and even if the Bench indicates its willingness. In that regard, the Chief Justice does have discretion. But, he submits, absent a joint consent by all parties and absent an indication or willingness by the Bench, the Chief Justice cannot treat the matter as part-heard before that Bench. He explains this further to say that merely on the joint request of the parties, without an accompanying indication of willingness of the Bench or, conversely merely at the request of the Bench, but without the joint request of the parties, the Hon'ble the Chief Justice cannot treat any matter as part-heard before any particular Bench. If the matter cannot be treated as part heard as per the SOP, then the Chief Justice is bound to have it listed as per the current roster. In other words, the Chief Justice cannot hand pick or cherry pick which matter goes to which Bench in a deviation from the published roster.

18. Necessarily, his submission is that if it is shown that parties have not in fact have consented, and despite this there is an

assignment of a matter to a particular Bench, such an administrative order is plainly beyond the powers of the Chief Justice. Any such order must be held to be justiciable and subject to judicial review. This, he submits, is essential to the fair and transparent administration of justice. Just as no party should be allowed to forum shop and select benches, equally Benches should not be allowed to deviate from established protocols and keep matters to themselves. The only way a Bench can retain a matter to itself as part-heard, despite a change in roster which takes that matter out of its present assignment, is by means of the published and established protocol combining all three components indicated above. He is careful to draw a distinction between a matter that is part-heard or sought to be treated as part-heard and a matter that is closed or reserved for orders. No such assignment or protocol is necessary where the hearing is complete, and the matter is reserved for orders. Evidently, Mr Kurle readily accepts and concedes, where a hearing is complete, the matter will remain with the Bench that heard the matter until judgment is pronounced.

19. Mr Kurle's submission therefore lies in well-defined frame. He questions the power of the Chief Justice to assign a matter to a Bench in a manner not contemplated by the SOP to a any bench in deviation from the extant roster. He also raises the question of the justiciability of such an administrative order. Mr Kurle says that if his submissions are accepted then the Chief Justice's administrative order of 2nd March 2021 declining his application to have the Aakar Infra Petition taken up by the regular Bench as per the roster is an administrative order that demands interference, cannot be sustained and must be set aside. As a necessary corollary to his argument, and

whether or not this is stated on Affidavit is immaterial, he submits that if an administrative order of this kind is justiciable, then it must take the colour of any quasi-judicial order or indeed any administrative order that is susceptible to judicial review. Specifically, that order must indicate reasons and an application of mind. We have not heard him to argue that a personal hearing is a requirement before an order is passed, but he is clear that at least minimal reasons are required in any such administrative order.

20. This presentation will necessarily take us to an examination of the position of the Chief Justice as Master of the Roster. Before we look at the various authorities that Mr Kurle for the Petitioners and Mr Nargolkar for the 1st Respondent, the Registrar General, have placed before us, we note certain provisions of the High Court rules both on its Original and Appellate Side. Rule 27 of the Bombay High Court (Original Side) Rules reads thus:

> "**R.27 Assignment of work to be made by the Chief Justice.—** Suits, Summary Suits, Matrimonial Suits, Commercial Causes, Testamentary and Intestates Suits, and matters, Writ Petitions, Company Matters, Land Acquisition References, Income-tax and other tax matters, Insolvency matters, Admiralty and Vice-Admiralty Suits, Disciplinary matters and all other matters and proceedings in the exercise of the Original Jurisdiction of the High Court shall be heard before such Judges the Chief Justice shall from time to time appoint."

21. The corresponding Rules on the Appellate Side are found in various places. Rules 1 and 4 of Chapter X read thus:

> "**1. Chief Justice to nominate Judges in charge of**

classes of proceedings. — The Chief Justice will nominate from time to time seven Judges (hereinafter referred to as the Judges in charge) to be in charge of :—

(1) First Appeals (Division Bench) and Letters Patent Appeals.

(2) First Appeals (Single Judge), Appeals from Orders, Revision Applications and other Single Judge's Civil Matters.

(3) Writ Petitions (Division Bench)

(4) Writ Petition (Single Judge)

(5) Second Appeals.

(6) Criminal Appeals and Applications (Division Bench).

(7) Criminal Appeals, Revision Applications and other Single Judge's Criminal matters.

4. Preparation of Weekly and Daily Boards.—

(1) Weekly Board of each class of cases from the Warned List shall be prepared and placed on the Notice Board every Friday, which shall contain the list of cases which are likely to be placed on the Daily Board, before the appropriate Courts during the week commencing after ten days. This Weekly Board shall be prepared strictly in accordance with the serial order in the Warned List.

(2) On the last working day of the Court in each week, Daily Boards containing the cases assigned to each Judge or a Bench of Judges according to the orders of the Chief Justice shall be prepared and put on the Notice Board for the next working day of the Court in the following week. Such Daily Boards shall, subject to such orders as may be passed by the Chief Justice or the Court, and save as otherwise provided in these Rules, be prepared strictly according to the serial order of the cases on the Weekly

Board. After the conclusion of the sitting of the Court on the first working day of the week, the Daily Board for the next working day shall be prepared and shall contain matters left over from the Daily Board of that day with the addition of as many matters from the Weekly Board as may be expected to be heard on the following day:

Provided that if the Court concerned so desires or the Chief Justice so directs Weekly Boards may also be prepared for the day-to-day hearings of the cases before the Courts. Such Weekly Boards of hearing shall be prepared and noticed on the last working day in the preceding working week of the Court. At the end of each working day matters disposed of by the Court or Courts during the course of the day shall be struck off from such boards:

Provided further that a week for the purposes of the Weekly Boards mentioned in the preceding proviso may commence on any day of the week as may be desired by the Court or as may be directed by the Chief Justice:

Provided also that the first 25 (or so many as may be directed by the Court concerned) of the matters put or left over on the Weekly Board so prepared at the commencement of each working day shall ordinarily (but not necessarily) be regarded as the quota of cases fixed for hearing on the day.

(3) Motions for urgent circulation shall be made either immediately after the Court assembles, or reassembles, as the case may be, for hearing in the forenoon or the afternoon, or just before the Court rises for the lunch interval. No such motion shall be made or permitted at any other time after 3 pm., except under special circumstances and unless the party of the Advocate concerned satisfies the Court that he could not move the Court as required under the earlier part of this sub-rule or earlier than 3 pm., as the case may be.

(4) The Sheristedar-in-charge of the respective Courts shall seek and obtain orders of the Court at 3.30 p.m. on full working days and at 1 p.m. on Saturdays and half working days for discharging the Boards of the day and shall immediately convey orders of the Court in this regard to the Board Department.

(5) Cases which are on the Provisional Board in any week shall, if not disposed of, be included in the Weekly Board, for the following week."

22. Rule 1 of Chapter XVII deals with the assignment of certain classes of matters (those under Article 226 of the Constitution) to a Division Bench. There is a corresponding Rule 18 regarding the Single Judge's powers to dispose of the Petitions under Article 226 and applications under Article 227. It lists some 46 Acts that are covered but in essence says that notwithstanding anything contained *inter alia* in Rule 1, Applications under Article 226 or 227, or both, may be heard and finally disposed of by a Single Judge appointed in this behalf by the Chief Justice if they arise under any of the 46 Acts listed in that Rule.

23. The second proviso reads thus:

"Provided further that the Chief Justice may assign any petition or any category of petitions falling under Clauses 1 to 46 or any Clause that may be added hereinafter to, a Division Bench."

24. Mr Kurle submits that these are only broad directions for setting a roster generally. His submissions are:

(a) *First*, that once a roster is set, the Chief Justice cannot deviate from its protocols in treating a matter as part-heard before a particular Bench merely because that Bench says so if the parties have not consented.

(b) *Second*, the Chief Justice has no power to assign a particular matter to a particular Bench in deviation or at variance with the published roster.

(c) *Third*, he submits that the orders of the Chief Justice assigning matters (or treating them as part-heard) as ex hypothesi justiciable and subject to judicial review.

25. Mr Kurle submits that there is a large body of law to support the position he adopts today. A consistent view, in his submission, of various Courts has been that orders of the Chief Justice are not saved from or immune to judicial review and its essential parameters.

26. He draws our attention first to the decision of a learned Single Judge of this Court in *RJ Mehta v His Lordship the Chief Justice, Venkat Shrinivas Deshpande.*[2] The Petitioner was a well-known trade union leader. The relief sought was for a declaration that two sitting Judges were disqualified from continuing to hold office as such and should be restrained from acting as Judges in all cases to which the State of Maharashtra, the subject Trust (the Indira Gandhi Prathiba Pratishthan) and its donors were parties. The petitioner expressed a serious apprehension about judicial independence since the two respondent Judges in question were among the trustees of the IGPP.

2 1982 SCC OnLine Bom 38 : AIR 1982 Bom 125 : (1982) 1 Bom CR 273.

Mr Justice SC Pratap framed the question in paragraph 6 thus: is such an apprehension justiciable? And, equally important, is a Writ Petition such as this an appropriate remedy at all? He proceeded to answer both questions in the negative. In paragraph 8 of this decision, he held that the assignment of work is, subject to the Rules of the High Court, the exclusive right, duty and privilege of the learned Chief Justice. The contention before him was (in 1982, and, as we shall presently see, also decades later in 2018) that the time had come to specify norms for the assignment of judicial work by the Chief Justice. Mr Justice Pratap believed that this was a matter best left alone. It was specifically contended before him that the assignment of work was an administrative function subject to judicial review. The Court held that even assuming this to be correct, every single administrative function was not, per se, judicially reviewable. Except perhaps in a case of a patent and clear breach of express rules affecting the jurisdiction of the Court, Mr Justice Pratap said, he could not go to the length of holding that the function itself was justiciable and could be judicially reviewed or controlled. To do so would be to open the floodgates of a virtual stalemate and, in his words, “anarchy in administration”.

27. Mr Kurle relies on this passage to say that where it is demonstrated that there is a patent and clear breach of rules affecting the jurisdiction of the Court the administrative decision is indeed judicially reviewable.

28. The argument appears to us to be unfounded and perhaps misconceived. The question is not of the jurisdiction of this or that Bench. The question is of the authority of the Chief Justice as the

Master of the Roster. That is not a question of jurisdiction at all. Further, the reference to 'Rules' is a reference to the Rules of the High Court on its original and appellate sides. The roster itself is not a 'Rule'. What Mr Justice Pratap undoubtedly intended was an administrative decision that is a clear and patent breach of the Bombay High Court (Original Side) Rules or the Bombay High Court Appellate Side Rules, not a direction in the roster. Further, that breach would have to be shown to be one affecting jurisdiction *of the Court*. It is no part of the present case that the Chief Justice's administrative directions violate the Original Side or Appellate Side rules or that the jurisdiction of the Court is in any way affected. It is well known that an authority is a precedent only for what it actually decides. Every decision must be read in context. A sentence or observation in a cited precedent cannot be plucked out, isolated, and then expanded to an altogether different jurisprudence.

29. Mr Kurle then relies on the decision of the Supreme Court in *CIT Bombay City v Shri RH Pandi, Managing Trustees of Trust, Bombay.*[3] The question there was whether an application for condonation of delay in filing a petition of appeal could be heard by a judge in chambers. The argument advanced was that if an application for condonation of delay was refused by the judge in chambers, it effectively amounted to a dismissal of the appeal itself. It was therefore submitted that the application should have been heard in Court. Mr Kurle relies on the observations made in paragraph 6 for a far simpler proposition, which is to say that where there is an established practice, it is convenient to adhere to it simply because it is a practice. This is in support of his contention

3 (1974) 2 SCC 627.

that deviations are not only undesirable but are impermissible. Where there is a deviation, therefore, his submission is that the decision is subject to judicial review. But the first proposition Mr Kurle advances is far beyond what the decision says. "Convenient" does not equate to "compulsory"; it only means that deviations from an established practice should ordinarily not be made. To reach his destination, Mr Kurle must show that there is in fact a deviation. As we shall presently see, that cannot be said of the present case at all. Further, the fact that there has been a deviation, even from an established practice, does not axiomatically lead to a conclusion of justiciability.

30. There is then an extremely elaborate decision of a Full Bench of the Calcutta High Court in *Jyoti Prokash Mitter v The Hon'ble Mr Justice HK Bose, Chief Justice of the High Court, Calcutta*.[4] The Appellant was first appointed an Additional Judge of the Calcutta High Court. He was confirmed as a permanent Judge. He claimed to be in office still. He filed an appeal from an order of another Judge. The appellant, as a sitting judge, had filed an application under Article 226 of the Constitution demanding the issue of a Rule on the Chief Justice to show cause why the Chief Justice should not give directions recalling orders made by him. The appellant claimed that the Chief Justice's orders impermissibly interfered with the appellant's discharge of duties and functions as a Judge of the Court. In paragraph 140, the Full Bench noted that the appellant had sought a mandamus against the Chief Justice in respect of his administrative orders. A Special Bench of the Calcutta High Court in an unreported decision had held that no mandamus lay against

4 1963 SCC OnLine Cal 159 : AIR 1963 Cal 483 : (1962–63) 67 CWN 662.

the Chief Justice in respect of his administrative orders. That matter went to the Supreme Court which left the question open but observed that a mandamus may lie against the Chief Justice in respect of his administrative orders in appropriate cases. That decision of the Supreme Court is reported in *Prodyut Kumar Bose v The Hon'ble the Chief Justice of Calcutta High Court*.[5] In a later decision in *Pramatha Nath Mitter and Ors v the Chief Justice of High Court of Calcutta*,[6] a Division Bench of the Calcutta High Court proceeded on the basis that a mandamus may lie against the Chief Justice in respect of his administrative orders in appropriate cases. The Judge in question may have to decide whether the case before him is or is not "an appropriate case" within the meaning of what the Supreme Court intended.

31. In our understanding of the position so far, all administrative decisions are not necessarily equal even if taken by the Hon'ble the Chief Justice. There may indeed be a class of administrative decisions that might lend themselves to some form of judicial review, though perhaps in a limited sense. For instance, a service matter, especially one that results in an order, say, of compulsory retirement, termination from service or the like, may perhaps lend itself to some form of judicial review in appropriate circumstances. This may have to be distinguished from a general power of review, which must be specifically conferred. It is our understanding that an order that in some fashion determines civil rights, even if styled as an administrative order, may, in an appropriate case, be subject to

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5 (1955) 2 SCR 1331 : AIR 1956 SC 285 : Reported as *Pradyat Kumar Bose v The Hon'ble the Chief Justice* etc

61961 SCC OnLine Cal 134 : 65 CWN 920 : AIR 1961 Cal 545.

some form of judicial review. It is not the high position of the authority that is material, but the nature of the order that is determinative. An order that does not determine any rights at all (and we are not confining ourselves here merely to questions of assignment of matters around the roster), when exercised by the Chief Justice is not necessarily subject to judicial review. An order assigning a matter to a particular Bench does nothing at all on merits. It determines nothing except who should hear it. It is not a judgment. It is not a decree. It is simply a direction to have the matter heard and disposed of by this or that Bench nominated by the Chief Justice. It affects no rights, for no party has the right to say that his or her case must be heard by a particular Bench and none other. A party can only demand that his or her petition or proceeding be heard *by the Court*. Which particular Bench should hear that proceeding is not for a litigant to say or demand. Once there is the power in the Rule given to the Hon'ble the Chief Justice to nominate a Bench or Benches, then assigning a matter to this or that Bench is not, in our view, an order that lends itself to any form of judicial review at all.

32. This takes us to the next decision cited by Mr Kurle, that of *Sudakshina Ghosh v Arunangshu Chakraborty (Uday).*[7] In that matter, the propriety of an order passed by the Additional District Judge was under challenge in an application under Article 227 of the Constitution of India. A confusion arose as to whether such an order was revisable by the High Court in its Civil Revisional Jurisdiction or in its Criminal Revisional Jurisdiction as two different Benches differed. One Revision Application was assigned to a particular

7 (2008) SCC OnLine Cal 34 : 2008 Cri LJ 1697.

Bench by the then Hon'ble the Chief Justice by an administrative order. A learned Single Judge of the High Court referenced the Supreme Court decision in *National Sewing Thread Co. Ltd. v James Chadwick & Bros*,[8] but that related to the power of the Court to make Rules and to provide whether an appeal has to be heard by one Judge or by Division Benches of two or more Judges. In paragraph 20 of *Sudakshina Ghosh*, the learned Single Judge said that he had no hesitation in holding that

> the Rules that had been framed by the Court regarding distribution of its business should be followed strictly and the administrative decision of the Hon'ble the Chief Justice regarding distribution of its business cannot override the said rules.

33. For the reasons that are self-evident, Mr Kurle relies heavily on this observation. He reads it as an authoritative decision for the proposition that the Chief Justice cannot deviate *from the published roster*. We cannot accept the correctness of this submission. It seems to us over-broad and perhaps tending to unthinkable, an unwarranted restraint on the powers of the Chief Justice as the Master of the Roster. We also believe that, for reasons to which we immediately next turn, if Mr Kurle's submission on the decision in *Sudakshina Ghosh* is correct, then the decision is no longer good law in view of later decisions of the Supreme Court and can safely be said to have been implicitly overruled.

34. But we need not go that far. For it seems to us clear that Mr Kurle has misunderstood what Jyotirmay Bhattacharya J meant and

8 1953 SCR 1028 : AIR 1953 SC 357

intended in *Sudakshina Ghosh*. He spoke of the "Rules framed by the High Court regarding distribution of business". This is emphatically not a reference to any roster. It is a reference to the Rules, i.e., those in parallel with, or like, our Original Side and Appellate Side Rules. For it is these Rules, and these Rules alone, and not the roster, which are 'framed by the High Court'. The roster is not 'framed'. It is set. And it is not set 'by the High Court' but only by the Chief Justice. The Rules are not the roster, and the roster is not the Rules. What *Sudakshina Ghosh* requires is for the roster to be set according to the High Court Rules. In the Bombay High Court, the roster needs to be set in accordance with the Original Side and Appellate Side Rules. The Chief Justice's roster cannot override these Rules. Typically, Rules are framed by the High Court in congregation or Full House, a collective exercise by all judges. This is not so for a roster, in which puisne judges have no say as of right or convention. Thus, the reference in *Sudakshina Ghosh* is not the roster, but the Rules framed by the High Court. It is not possible to equate the roster with the Rules.

35. It is, we think, essential that a decision be read accurately and fairly for what it decides. No authority should be stretched or distended to an altogether different meaning, one never intended. Mr Justice Bhattacharya could not and did not intend to say that the Chief Justice is bound by his own roster. He only said that the roster set by the Chief Justice must conform to the Rules framed by the High Court. The roster and the Rules are two very different things. *Sudakshina Ghosh* does not support the proposition Mr Kurle advances.

36. Mr Kurle then relies on the decision of a Single Judge of Madras High Court in *S Gopal Raju v Mr Justice MS Liberhan, the Hon'ble Chief Justice, High Court, Madras*.[9] The petitioner prayed for a direction against the Chief Justice of the Madras High Court to restrain a judge of the High Court from enquiring into a batch of Writ Petitions. The request there was to post them before any Division Bench not consisting of the 1st respondent judge. In paragraph 52, the learned Single Judge, K Sampath J, held:

> "52. In *Mahesh Prasad v Abdul Khar (AIR 1971 Allahabad 205,* the Court held that,
>
> > "Though the Supreme Court had not decided the question whether a writ lay against the Chief Justice or any Judge acting in an administrative capacity, the Supreme Court's observations in *Pradyat Kumar Bose v. The Hon'ble the Chief Justice of Calcutta High Court* (AIR 1956 S.C. 285 = 1955-2 S.C.C.1331) would suggest that a writ would lie and that the grant of a writ raised only a question of propriety."
>
> Following *TN Devasahayam v State of Madras and others* (AIR 1958 Madras 53 = 71 L. W 583) and *Pramatha Nath Mitter and Ors v Chief Justice of Calcutta* (AIR 1961 Calcutta 545), the Allahabad High Court held that,
>
> > "A writ lay against the Chief Justice acting in his administrative capacity and confirmed the order under appeal, which had quashed the Chief Justice's orders".
> >
> > The Court observed that,
> >
> > "The administrative act of the Chief Justice

9 1998 SCC OnLine Mad 534 : (2000) 2 LW 28.

> was not the act of the High Court because Articles 224 to 228 and Articles 233 to 235 speak of the High Court as a collective body whereas Article 229 confers power on the Chief Justice individually, thus making a distinction between Judges of the High Court collectively and the Chief Justice."

Even in *Mahesh Prasad v Abdul Khair* (AIR 1971 Allahabad 205), the question related to selection of High Court Staff. The Division Bench of the Allahabad High Court, after referring to a number of decisions of various High Courts and Supreme Court held as follows:

> "The Constitution has made a distinction between the High Court as a collective institution and the Chief Justice. When the Chief Justice acts for an exercise of the power vested in him under Article 229 he does not act for the High Court. He acts in his individual capacity as the Chief Justice. Any other Judges of the High Court can, therefore, entertain a writ petition and sit in judgment on the order of the Chief Justice passed administratively."

37. Although it is fair of Mr Kurle to bring this decision to our notice, we believe that fairly read it is against the proposition he canvasses. It draws a clear distinction between the Rules established by the High Court collectively and the power of the Chief Justice individually — precisely our observation while addressing *Sudakshina Ghosh* a little earlier.

38. Then, in paragraph 74 of *S Gopal Raju v Mr Justice MS Liberhan*, the learned Single Judge held:

> "74. Before mandamus can issue there must be a duty without discretion, upon the person or body whom the order is directed to do the very thing ordered. *(Vardy v Scott* – (1976) 66 DLR (3d) 431 *O'Grandey v Whyte* (1982) 138 DLR (3d) 167) It has not been shown that the petitioner has a legal right to the performance of a legal duty to obtain a writ of mandamus from this court. The office objection is sustained."

39. This is appropriate to the present case. For, unless Mr Kurle can show that there is a 'duty without discretion' upon the Chief Justice to do the very thing demanded, no mandamus can issue. Our Petitioners must show they have a *legal right* to demand the performance by our Chief Justice *of a legal duty*. Even if the present Petition's prayers do not include a prayer for mandamus, we have no choice but to accept that this is indeed what the Petitioners seek. Merely quashing the 2nd March 2021 order — the only challenge in this Writ Petition — achieves nothing. It reverts the matter to the position as it stood on 18th January 2021, when the Chief Justice administratively directed the Aakar Infra Petition to be placed before the Bench of Kathawalla and Colabawalla JJ. That direction, as we have noted, is not under challenge before us. Therefore, correctly read, the thrust of the Petition is that the Aakar Infra Petition *must* be referred to 'the regular Bench' as per the roster and not to the Bench which said it had heard the matter finally, i.e., the Bench of Kathawalla and Colabawalla JJ. This is what makes it essential for the Petitioner to demonstrate the existence in them of a legal right and corresponding or concomitant legal duty in the Chief Justice.

40. Mr Kurle then relies on paragraphs 21 and 26 of a Full Bench decision of the Madras High Court in *The Mayavaram Financial Corporation Limited, Maylladulurai v The Registrar of Chits, Pondicherry*.[10]

> "21. The order in appeal concluded the matter as follows:
>
> > "We have looked at the original record of the writ petition out of which the present appeal arises and do not find any discretion in the order sheet that the case was to be treated as Part heard. It is therefore, difficult to appreciate how the case could have been listed before the learned Judge and how the impugned order modifying the interim relief previously granted could have been passed by him on that day. Besides the terms in which the interim relief war granted at the stage of the issue of rule in the present case have been quoted earlier. Liberty was thereunder reserved to the respondents in the writ petition to apply for vacating and or varying the interim order upon notice to the writ petitioner. The proper remedy for the party aggrieved by such interim order was to move the appropriate Bench which was dealing with the said category of cases under the extent determination with an application to modify or vacate the said order. There was no question of recalling the said order and so called application for recalling the order was thoroughly misconceived. The learned Judge, therefore, could not have entertained the application as such and determined the

10 1990 SCC OnLine Mad 603 : 1991-2-L.W.79.

> subject matter in controversy between the parties and passed judicial order granting relief in any form in the said proceeding"

We think, we should remind ourselves that the jurisdiction of the Court may be qualified or restricted by a variety of circumstances. The power of the Court may be exercised within such limits and in such manner that it ensures a fair hearing, unbiased determination of the dispute and no Judge should be in a hurry or be concerned with any particular case because, as observed in the judgment of the Calcutta High Court (supra),

> "The cardinal position cannot be overlooked that before jurisdiction over the subject matter is exercised, the case must be legally brought before the concerned Court for the hearing and determination and that a judgment pronounced by court without investment of jurisdiction is void."

26. To sum up:

(1) Code of Civil Procedure does not apply to a writ proceeding under Art. 226 of the Constitution of India. Courts, however, sometimes constructively apply certain basic principles enshrined therein to the writ proceedings, on grounds of public policy or dictates of reason or necessity whenever it is found to be essential for the effective administration of justice.

(2) A writ appeal is the continuation of the writ petition. Merely because it is an appeal under the letters patent of the Court, it does not change its character from being a writ proceeding to an ordinary civil proceeding.

(3) **The Hon'ble the Chief Justice has the inherent power to allocate the judicial business of the High Court including who of the Judges should sit alone and who**

should constitute the Bench of two or more Judges. No litigant shall, upon such constitution of a Bench or allotment of a case to a particular Judge of the Court will have a right to question the jurisdiction of the Judges or the Judge hearing the case. No person can claim as a matter of right that this petition be heard by a single Judge or a Division Bench or a particular single Judge or a particular Division Bench. No Judge or a Bench of Judges will assume jurisdiction unless the case is allotted to him or them under the orders of the Hon'ble the Chief Justice.

(4) A Judge or the Judges constituting the Bench will not decide whether to entertain a review petition or not unless the same is placed before him or them under the orders of the Hon'ble the Chief Justice.

(5) Unless it is on account of exceptional circumstances or to meet an extraordinary situation the Hon'ble the Chief Justice decides to allot the work to some other Judge or Judges, as the case may be, we consider it to be prudent as well as desirable that the Judge or Judges who passed the judgment/decree or made the order sought to be renewed, hear the review petition and in the case of the judgment decree or order of a bench the Judge or the Judges who are available are associated as members of the Bench."

(*Emphasis added*)

41. Once again, we believe that this decision does not in any way limit the power of the Chief Justice as the Master of the Roster. To the contrary, paragraph 26(3) puts the matter clearly: only the Chief Justice decides which Bench should hear what matter or class of matters. It is not the legal right of any litigant to demand that his or her case should be heard by a particular Division Bench. Mr Kurle's

emphasis on this is more than somewhat misplaced because the question before the Full Bench was whether the Judge or Bench who or which passed a Judgement or Decree or made the order that is sought to be reviewed should hear the Review Petition or some other Bench should hear the application. The Full Bench only said that ordinarily a Review Petition should go before the Bench that passed the original order. It is only in exceptional circumstances that the Review Petition can be placed before some other Bench. This is clear from the observations at the end of paragraph 23.

> "23. … … … A prudent exercise of discretion by the Hon'ble the Chief Justice in this matter and **since this power has been held to inhere and vest with the Hon'ble the Chief Justice, in our view, by itself is a sufficient safe guard to ensure its prudential exercise, should be more than enough for the parties to accept the constitution of the Bench or allotment of the case to a Judge or Judges for the hearing of the review petition.**"
>
> (*Emphasis added*)

42. This decision is therefore no authority for the proposition Mr Kurle canvasses, i.e., that the Chief Justice cannot deviate from the roster that he himself has set, and that he alone, as the Master of the Roster, has the sole authority to set.

43. We therefore read the Full Bench decision not as an unqualified pronouncement that the Chief Justice can assign matters only in exceptional circumstances but that his power to assign matters to a particular Bench is itself a prudent exercise of discretion, one that inheres and vests in the Chief Justice.

44. Another Full Bench of the Madras High Court in *M Ranka v The Hon'ble Chief Justice of Tamil Nadu*[11] had before a matter where respondents nos. 2 to 4 were all Judges of the Court. Before the Full Bench there was a Contempt Petition and a Writ Petition. Those matters were referred to the Full Bench and a prayer was for a direction to Chief Justice, the 1st respondent to direct the Registry to number the Contempt Petition and place the papers before the Chief Justice to constitute an appropriate larger Bench to hear all these matters. The main prayer was to issue a mandamus directing the Chief Justice not to post any of the matters in which the Petitioner appeared as a Counsel or as a party-in-person before the Puisne Judges arrayed as respondents nos. 2 and 3, whether sitting singly or together in a Bench or as members of another Bench. The Full Bench expressly disagreed with the finding of a previous Division Bench to the effect that the Chief Justice had not power, authority or jurisdiction to withdraw or transfer a matter already before another judge or Bench. Paragraphs 4 and 5 of the Full Bench *Ranka* decision read thus:

> "4. The petitioner himself filed a similar writ petition in W.P. No. 18704 of 1990 against the Chief Justice of this Court, two Puisne Judges and the Additional Registrar (Judicial) of this Court. The main prayer was to issue a mandamus directing the Chief Justice not to post any of the matters in which the petitioner appears as a counsel or party in person before respondents 2 and 3 therein, either in a Bench or sitting single. That writ petition was dismissed by one of us (Bakthavatsalam, J.) on 20.12.1990. The Judgment is reported in *M. Ranka v. Honourable Chief Justice of Tamil Nadu High Court Madras and Ors*. (1991) 2

11 1993 SCC OnLine Mad 369 : (1994) 2 LW 138 (FB) : (1994) 1 Mad LJ 349(FB).

L.W. 98. However, it was observed in that Judgment that it was open to the petitioner to approach the Chief Justice and make a request that his case may not be heard by a particular Bench. Reliance was placed on a judgment of Ramalingam, J. In W.P.SR. No. 60737 of 1990 dated 12.9.1990 in which the same view was expressed. The petitioner preferred an appeal in W.A. No. 17 of 1991, which was heard by a Division Bench. The appeal was dismissed by the Division Bench by its Judgment dated 13th March 1991 which is reported in (1991) 2 L.W. 225. While upholding the Judgment of the single Judge that the writ petition was not maintainable, the Division Bench differed from the view expressed by the single Judge that it was open to the petitioner to request the Chief Justice not to post the matter before a particular Bench. In the judgment, the Division Bench quoted the passage extracted above from the judgment of the Full Bench in the *Mayavaram Financial Corporation* case (1991) 2 L.W. 80. **The Division Bench proceeded to hold that the Chief Justice has no jurisdiction to transfer a case which is already before a Bench or a learned Judge of the court**. The relevant passage in the Judgment reads thus:

> "With respect we disagree with the last observation of S. Ramalingam, J. that a party or a counsel may make a special mention before the Chief Justice so that the case pending before one Bench may be posted before another Bench. So far as other two observations are concerned, we think it right to say that if for some reasons, the learned Judges assigned with a case or cases, find that they should not hear the case or the cases, they may direct the papers to be placed before the Chief Justice for posting such case or cases before some other Bench and in some

extraordinary circumstances, the counsel appearing in a case may make a special request that a particular case or cases may not be heard by a particular Bench for reasons none other than the reasons that are spelt out in the principles that no one shall be a judge in his own cause (*Nemo debet causa judose propria causa*). So far as the first rule is concerned, if the Judge himself or the Judges themselves say that a particular case or cases assigned to him/them say be taken out of his/their list, there should be no difficulty. So far as the second rule is concerned in which it is said that a counsel may bring to the notice of the court that a particular case or cases may not be heard by a particular Bench or a Judge of the court means to say only that the counsel would bring a fact to the notice of the court and no more. He cannot be allowed to insist or ask this Court not to hear a case. It will be again for the Judge or the Judges hearing the case to decide whether they should say that the cases be listed before another Judge or Bench or not. Judges of the court including the Chief Justice are equals and exercise the same judicial power except such powers that are specifically assigned to the Chief Justice. There is no reason to concede a power in the Chief Justice to transfer a case from one Bench to another Bench of the Court or from one Judge to another Judge of the Court. Act of allocating business or portfolio or assigning case or cases is different from the act of recalling the case from the file of a particular Judge or a Bench of the court and from

> transferring a case from the file of a particular Judge or a Bench of the court and from transferring a case from the file of a particular Judge or a Bench of the court, to another Judge or a Bench of the court because any decision about it would partake the character of a judicial order.

5. A Division Bench of the Nagpur High court has occasion to consider the same question in *Zikar v MP State Government* AIR 1951 Nag 11. It was held that there is no power in the Chief Justice of a High Court under the Constitution or the Letters Patent or the Rules of the High Court or Section 108(2), Government of India Act, 1915 to withdraw or transfer a case which a Divisional court is in seisin. **It was also held that a litigant's right is only to invoke the jurisdiction of the High Court and not to have his case decided by any particular Judge or Judges and that the matter is entirely one of internal arrangement of the High Court with which the litigant has no concern.** With respect we agree with the propositions laid down in the above cases **and hold that it is not open to the party or a counsel to pray that his cases should not be posted before a particular Judge or Division Bench.** The petitioner argued vehemently that the ruling of the Division Bench in *M Ranka v Hon'ble the Chief Justice of Tamil Nadu* (1991) 2 L.W. 225 is erroneous and *per incuriam*. According to him, it is not open to a Division Bench to overrule the views expressed by two single Judges sitting separately and it ought to have referred the matter to a Larger Bench. There is no substance in the contentions and we are unable to accept the same."

(*Emphasis added*)

45. Mr Nargolkar for the Registrar General and Mr Anuj Desai for Respondents Nos. 3 and 4 not only distinguish and clarify these decisions cited by Mr Kurle but point out that the state of the law is now not ambiguous in view of later decisions of the Supreme Court.

46. The first of these is the decision of a three-Judge Bench of the Supreme Court in *State of Rajasthan v Prakash Chand & Ors.*[12] This dealt specifically with the administrative powers of the Chief Justice inter alia in setting the roster. *Prakash Chand* is, in our view, a complete answer to the proposition Mr Kurle canvasses before us today. Paragraphs Nos. 9, 10, 11, 14, 15, 16, 21, 22 and 59 (relevant portions) are of such importance that we will not attempt to summarize these but will set them out fully.

> "9. By virtue of the powers conferred by the Rajasthan High Court Ordinance, 1949 read with article 115 of the Constitution of India, the High Court of Rajasthan, with the approval of the Governor of the State, framed Rules of the High Court of Judicature for Rajasthan, 1952. Chapter V of the Rules deals with the constitution of Benches. Rules 54 provides:
>
> > "54. *Constitution of Benches.*- Judges shall sit alone or in such Division Courts, as may be constituted from time to time and do such work, 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 direction."
>
> 10· **A careful reading of the aforesaid provisions of the Ordinance and Rule 54 *(supra)* shows that the administrative control of the High Court vests in the**

12 (1998) 1 SCC 1.

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 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 the Judges of the High Court can sit alone or in Division Benches and do 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 makes 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**:-

> "73. *Daily Cause List.*- The Registrar shall subject to such directions as the Chief Justice may give from time to time cause to be prepared for each day on which the Court sits, a list of cases which may be heard by the different Benches of the Court. The list shall also state the hour at which and the room in which each Bench shall sit. Such list shall be known as the Day's List."

11. This is the consistent view taken by some of the High Courts and this Court which appears to have escaped the attention of Shethna, J in the present case, when he directed the listing of certain part-heard cases before him as a single judge by providing a separate board for the purpose, while sitting in a division Bench."

14. In *State of Maharashtra v Narayan Shamrao Puranik,* AIR 1982 SC 1198, referring to the power of the Chief Justice to make roster, this Court opined:

> "**The Chief Justice is the master of the roster. He has full power, authority and jurisdiction in the matter of allocation of business of the High Court which flows not only from the provisions contained in sub-s (3) of S.51 of the Act, but inheres in him in the very nature of things.**"

15. Again, a Full Bench of the Madras High Court in *Mayavaram Financial Corporation Ltd. vs. The Registrar of Chits.* 1991 (2) L.W. 80, opined:

> "**The Hon'ble the Chief Justice has the inherent power to allocate the judicial business of the High Court including who of the judges should sit alone and who should constitute the Bench of two or more Judges. No litigant shall, upon such**

constitution of a Bench or allotment of a case to a particular Judge of the Court will have a right to question the jurisdiction of the Judges or the Judge hearing the case. No person can claim as a matter of right that this petition be heard by a single Judge or a Division Bench or a particular single Judge or a particular Division Bench. No Judge or a Bench of Judges will assume jurisdiction unless the case is allotted to him or them under the orders of the Hon'ble the Chief Justice."

16. More recently, in the case of *Inder Mani vs. Matheshwari Prasad,* (1996) 6 SCC 587, a Division Bench of this Court has opined:

"**It is the prerogative of the Chief Justice to constitute benches of his High Court and to allocate work to such benches. *Judicial discipline requires that the Puisne Judges of the High Court comply with directions given in this regard by their chief Justice. In fact it is their duty to do so. Individual Puisne Judges cannot pick and choose the matters they will hear or decide nor can they decide whether to sit singly or in a Division Bench.***

When the Chief Justice had constituted a Division Bench of Justice V.N.Khare and the learned Judge, it was incumbent upon the learned Judge to sit in a Division Bench with Justice V.N. Khare and dispose of the work assigned to this Division Bench. **It was most improper on his part to disregard the administrative directions given by the Chief Justice of the High Court and to sit singly to take up, matters that he thought**

> **he should take up.** Even if he was originally shown as sitting singly on 22.12.1995, when the Bench was reconstituted and he was so informed, he was required to sit in a Division Bench on that day and was bound to carry out this direction. If there was any difficulty, it was his duty to go to the Chief Justice and explain the situation so appropriate directions in that connection. But he could not have, on his own, disregarded the directions given by the Chief Justice and chosen to sit singly. We deprecate this behaviour which totally undermines judicial discipline and proper functioning of High Court."
>
> *(Emphasis supplied)*

21. A Full Bench of the Allahabad High Court in *Sanjay Kumar Srivastava v Acting Chief Justice & Ors.* (W.P. 2332 (H.B) of 1993 decided on 7.10.1993) (1996) Allahabad Weekly cases 644 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 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 a 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 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 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 the Judges sitting alone or in Division Bench etc., work in a co-ordinated 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 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."
>
> *(Emphasis ours)*

59. From the preceding discussion the following broad CONCLUSIONS merge. This, of course, is not to be treated as a summary of our judgment and the conclusion 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 the master of the roster. He alone has the prerogative to constitute benches of the court and allocated 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 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 case 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) … … "

(*Emphasis partly ours*)

47. The observations and conclusions in paragraph 59 are really all that is required in this matter. It is clear that the Chief Justice is *primus inter pares*, the first amongst equals. This, however, is only the judicial side. On the administrative side, administrative control vests in the Chief Justice alone. Mr Kurle's submission obliterates this all-important distinction. By necessary extension, it means that even in the matter of setting or making a roster, the Chief Justice cannot act without a consensus from the other Judges.

48. A roster once set is, therefore, following *Prakash Chand* clearly binding on all Puisne Judges. No Judge may keep to himself a matter that is not within his assignment. There is at least one authority i.e., *Sohan Lal Baid v State of West Bengal and Ors*[13] that indicates that if a Judge takes a matter that is not within his assignment, he acts without jurisdiction and the resultant order is a nullity. This proposition, that a Bench that decides a matter outside

13 1989 SCC OnLine Cal 224 : AIR 1990 Cal 168.

the roster acts without jurisdiction, is also to be found in *Prakash Chand*, *Mayavaram Financial Corp* and other decisions.

49. A matter may be retained by a Bench as part-heard only in the manner specified by the administrative directions issued by the Chief Justice and which are of the general applicability. Had this therefore been a question of assessing whether a particular Bench had wrongly kept a matter to itself, a very different question might have arisen. But the limitation on a Bench or a Puisne Judge on retaining a matter as part-heard beyond a change in roster is not the same as a restriction on the Chief Justice in his exercise of his discretionary powers either to set the roster or to assign a matter to a particular Bench (or conversely not to assign it to a particular Bench).

50. It seems to us clear, and we speak plainly now, that the requirement of adherence to a roster is not only for administrative efficiency but also to guard against forum shopping. This is often attempted by unscrupulous litigants who perceive this or that Bench to be favourable to them. But there is a second aspect of the matter, perhaps one not much spoken of though it is equally important, which is to prevent the odd errant Judge (as in *Prakash Chand*) from wrongly keeping a matter to himself or herself. It is this duty of safeguarding on both counts that vests the Chief Justice with such broad administrative discretionary power. If this power was to be held to be justiciable and subject to judicial review it would, in the prescient words of Mr Justice SC Pratap, lead to anarchy in administration. Every litigant would then question why a particular matter was or was not assigned to a particular Bench. The Chief

Justice, already overburdened with heavy judicial work and seemingly unending administrative work — especially in a large and complex court such as ours — would then find himself writing detailed reasons for assignment of matters to Benches. That is simply inconceivable.

51. In *Kishore Samrite v State of Uttar Pradesh & Ors,*[14] the Supreme Court in paragraphs 25 and 29 said this:

> "25. The roster and placing of cases before different Benches of the High Court is unquestionably the prerogative of the Chief Justice of that Court. In the High Courts, which have Principal and other Benches, there is a practice and as per rules, if framed, that the senior-most Judge at the Benches, other than the Principal Bench, is normally permitted to exercise powers of the Chief Justice, as may be delegated to the senior most Judge. In absence of the Chief Justice, the senior most Judge would pass directions in regard to the roster of Judges and listing of cases. Primarily, it is the exclusive prerogative of the Chief Justice and does not admit any ambiguity or doubt in this regard.
>
> 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 action but normally it may cast a shadow of improper exercise of judicial discretion. Where extraordinary jurisdiction, like the writ

14 (2013) 2 SCC 398.

> 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."
>
> (*Emphasis added*)

52. There is then the decision of the Supreme Court in *Campaign for Judicial Accountability and Reforms v Union of India And Another.*[15] This actually puts the matter beyond all controversy for the Supreme Court said, after noting *Prakash Chand* in paragraph 6:

> "6. There can be no doubt that the Chief Justice of India is the first amongst the equals, but definitely, he exercises certain administrative powers and that is why in *Prakash Chand* (*supra*), it has been clearly stated that the administrative control of the High Court vests in the Chief Justice alone. The same principle must apply *proprio vigore* as regards the power of the Chief Justice of India. On the judicial side, he is only the first amongst the equals. But, as far as the roster is concerned, as has been stated by the three-Judge Bench in *Prakash Chand* (*supra*), the Chief Justice is the master of the roster and he alone has the prerogative to constitute the Benches of the Court and allocate cases to the Benches so constituted."

53. Finally, there is the decision of the Supreme Court in *Shanti Bhushan v Supreme Court of India through its Registrar & Anr.*[16] This was a matter where precisely this question arose of the setting of a roster by the Chief Justice and whether it needed to be done in a

15 (2018) 1 SCC 196.
16 (2018) 8 SCC 396.

particular manner, and whether the Chief Justice needed to be placed under some form of procedural regulation in setting the roster. Two Judges of the Supreme Court, Dr AK Sikri J and Ashok Bhushan J, delivered separate but concurring judgments. Both agreed on the general principle that is applicable in such cases. Dr Sikri J said in paragraph 41:

> "41. In the aforesaid backdrop, role of the 'Chief Justice' as Master of Roster also assumes much significance. Each 'Chief Justice' performs his role by consultation and consensus, after taking into account various factors including individual Judges' interests and abilities, their specialisation in a particular area, their capacity to handle particular type of cases and many other relevant considerations. **However, the exercise of such a power with wisdom has to be left to the "*Chief Justice*" who is given the prerogative of the "*Master of the Roster.*"**"
>
> (*Emphasis added*)

For his part, Ashok Bhushan J said in paragraph 79:

> 79. The submission that Constitution does not specifically mention Chief Justice to exercise power of allocation of cases and constitution of Benches, hence, Chief Justice is not empowered to do the same, is not a valid submission. Under the constitutional scheme itself as contained in Article 145, the practice and procedure of the Supreme Court is to be regulated by the rules made by the Supreme Court with approval of the President.

54. There is also a decision of a Division Bench of this Court in *Lawyers' Forum of General Utility & Litigating Public, Aurangabad v The State of Maharashtra & Ors*.[17] (per AS Oka J, as he then was, and

17 2014 SCC OnLine Bom 1849.

GS Kulkarni J). Paragraphs 39 and 40 of the Division Bench Judgment read thus:

> "39. A distinction has to be made between a transfer sought to be made on the prayer made by the parties to the proceedings on the grounds which are not administrative in nature and a transfer sought to be made by the Hon'ble the Chief Justice on the administrative grounds. The second category will also include the cases where concerned Benches opine that the matters pending at different Benches need to be clubbed together and to be heard by one and the same Bench. As far as the first category is concerned, the transfers are normally sought on the ground of convenience of the parties to the litigations or on the ground that a party to the litigation is of the view that the matter should not be heard by a particular Judge or by a particular Division Bench. In the first category of cases, it is obvious that the Hon'ble the Chief Justice will have to hear the contesting parties before passing an order of transfer. As far as the second category is concerned, when the Hon'ble the Chief Justice transfers the cases on administrative grounds, he exercises his plenary power being the master of roster.
>
> 40. The Petitioner appearing in person has relied upon a large number of decisions in support of his contention that even in cases of administrative actions when civil rights of the parties are affected, the principles of natural justice will have to be followed. We need not reproduce the well settled law on the subject in catena of decisions relied upon by the Petitioner**. We do not see as to how the principles of natural justice will apply to the exercise of prerogative powers of the Hon'ble the Chief Justice as the master of roster. Therefore, the contention that the principles of natural justice will have to be followed by the Hon'ble**

the Chief Justice while exercising such powers deserves to be rejected."

(*Emphasis added*)

55. The conclusions summarized in paragraph 54 of *Lawyers' Forum* are:

"54. To summarize, our conclusions are as under:

(a) The power of the existing High Courts saved by Article 225 of the Constitution is the Power to make Rules providing for "exercise of its jurisdiction, original or appellate, by one or more Judges or by division courts consisting of two or more Judges of the High Court" not only in respect of the existing jurisdictions but also in respect of other jurisdictions and powers which the Constitution has conferred upon it. Article 225 does not save or confer power to frame Rules dealing with filing of matters at Benches and transfer of matters from the Benches to the principal seat at Mumbai. The said Rule making power is available only under Section 122 of the said Code;

(b) The proviso to Rule 2 of Chapter XXXI of the Appellate Side Rules is illegal and invalid as the same is in contravention of Section 126 of the Code of Civil Procedure, 1908;

(c) **It is well settled law that Hon'ble the Chief Justice of a High Court is always the master of roster. It is the prerogative of the Hon'ble the Chief Justice to allocate the judicial work to the Judges of the Court. Hon'ble the Chief Justice decides which Judge shall sit Single and which Judge shall sit in a Division Bench. A Judge or a Bench of the High Court can take up any particular case provided it is assigned by the Hon'ble the Chief Justice. It is axiomatic that when the Hon'ble**

the Chief Justice has power to allocate judicial work to the Judges and different Benches, he has a power to withdraw the matters assigned to the Judges or Benches. The said power is implicit as the Hon'ble the Chief Justice is the master of roster. Therefore, the power to transfer the matters filed at the Benches to the Principal Seat at Mumbai and vice versa always vests in the Hon'ble the Chief Justice. **Hon'ble the Chief Justice of this Court in exercise of his power as the master of roster can always direct that a particular category of cases pending before its Benches at Nagpur, Aurangabad and Goa shall be heard at the Principal seat.** Similarly, Hon'ble the Chief Justice of this Court in exercise of his power as the master of roster can always direct that a particular category of cases which ought to be filed before its Benches at Nagpur, Aurangabad and Goa shall be filed and heard at the Principal seat. While exercising the said plenary power of transfer, the Hon'ble the Chief Justice is under no obligation to hear the parties to the proceedings;

(d) As regards the orders dated 24th February 1993 and 6th January 2010, even assuming that the powers could not have been exercised under the proviso to Rules 1, 2 and 3 of Chapter XXXI of the Appellate Side Rules to issue the orders, the Hon'ble the Chief Justice possesses the powers to direct that a particular category of matters shall stand transferred to the Principal Seat at Mumbai on the ground of administrative convenience. Though the said orders could not have been issued *stricto sensu* in exercise of powers under the proviso to Rules 1, 2 and 3 of the Appellate Side Rules, it is not necessary to set aside the said orders as even otherwise the Hon'ble the Chief Justice has power to issue directions which he has issued under the said orders;(e)The orders of transfer of the Writ Petition No.9207 of 2011 and the Contempt Petition No.277 of 2012 have been passed in exercise of the power of the Hon'ble

> the Chief Justice as the master of roster, and therefore, the said orders cannot be interfered with."
>
> (*Emphasis added*)

56. We, therefore, accept the submission by Mr Nargolkar and Mr Desai that the powers of the Chief Justice as master of the roster in assigning work even during the pendency of the current roster in a manner that is a departure from that roster are not constrained. His administrative directions assigning a matter to a particular bench cannot be subjected to judicial review. No reasons are required. It is for the Chief Justice and the Chief Justice alone to decide whether or not a particular matter or class of matters should be taken by a particular Bench and what the composition of that Bench should be. We see no precedent to support the proposition that the Chief Justice cannot set a roster except in consultation with others. It may be a matter of courtesy that the Chief Justice consults a Puisne Judge or a Bench, but there is no such requirement.

57. Mr Nargolkar also submits that the SOP or procedure set in the roster for having a matter retained as part-heard is merely enabling. It provides a definable method by which *parties* can seek that a matter be retained as part-heard without running the risk of forum shopping. This requires, therefore, the joint request of both sides and the willingness of the Bench in question. But this does not mean, he submits, and we think correctly, that the Chief Justice is bound to accept that request. Nor does it mean that the Chief Justice cannot assign the matter even *absent* a joint request by the parties. No bench can refuse to take up a matter assigned to it by the Chief Justice unless of course the Bench is precluded from doing so

for one or more of well-known reasons (having appeared for one of the parties, etc).

58. At the end of the day, every institution has to have confidence and trust in he or she who is the leader of that institution and his or her administrative capacities and decisions. We must trust our Chief Justices; and we do. That is all there is to it. If his authority in administrative matters of setting a roster is to be constantly called into question or sought to be restricted or trammelled because it suits a particular litigant to do so at a particular time, the entire administrative edifice would simply collapse.

59. We are absolutely clear that no Bench can on its own take up matters outside its roster without a specific assignment by the Chief Justice. To do so would be to act without jurisdiction. But this does not mean that the Chief Justice himself is constrained by the roster or by any directions in that roster. To put it plainly, even if the parties do not consent and even if the Bench itself does not particularly indicate its willingness, it is open to the Chief Justice to assign a matter to a particular Bench in exercise of the discretion with which he and he alone is vested. That discretion cannot be called into question in any proceeding or manner.

60. During the course of arguments, we asked Mr Nargolkar whether his submission was indeed so broad, and whether he would accept the necessary consequence, namely, that a Chief Justice could conceivably in a given case withdraw from a Bench a matter that was part-heard or being heard either to his own Bench or assign

it to another Bench. Mr Nargolkar candidly said that consistent with his submission and based on the authorities in both *Prakash Chand* and *Shanti Bhushan* that was indeed his submission. He went on to say that even if in a given case a particular Chief Justice of a particular Court might have acted imprudently or even improperly regarding the withdrawal of a one particular matter, that in itself would not invalidate the power that inheres in the Chief Justice. There is substance to this argument. The fact that a law is being abused is not a reason to invalidate the law itself. The same principle will apply here. Even if, in a given case, a Chief Justice wrongly or improperly exercises the discretionary power vested in him as Master of the Roster, this is no reason to deny the *validity* of that power or that it does vest in the Chief Justice. The remedy for that lies elsewhere, not in seeking a judicial review.

61. It is for this reason that every decision and authority has held that the right of a litigant is to obtain a listing. No litigant has a right to insist on a listing before a particular Bench. To which Bench that matter should be assigned is an absolute, unfettered and untrammelled power that vests, and vests only, in the undergoing Chief Justice.

62. If this is the position in the law as we believe it is, then the challenge presented by Mr Kurle today must fail. As we noted at the beginning, on the Division Bench's direction, the Registry first place the matter before the Hon'ble the Chief Justice who assigned it to that particular Bench. That has not been challenged. Then came Mr Kurle's application of 10th February 2021. The application was simply to have it listed before "the regular Bench". As it happened,

the regular Bench was the Bench headed by the Chief Justice himself. The submission placed by the Registry was whether this application should be accepted or rejected. The Chief Justice on 2nd March 2021, exercised his discretionary power in his capacity as the Master of the Roster, a power that only he has, and directed that the application by Mr Kurle be rejected. That order determines no rights. It is purely an order of assignment. It is not subject to judicial review, and it is not justiciable.

63. We return to the formulation of Mr Kurle's three propositions set out earlier.

(a) As to whether the Chief Justice can deviate from the roster and assign a matter to a particular Bench, the answer is an unqualified yes.

(b) Can the Chief Justice 'treat a matter as part-heard' without the consent of the parties and willingness of the Judge? Again, the answer is yes; but the question really does not arise here. The Chief Justice has not 'treated the matter as part-heard' at all. He has simply assigned it to a particular Bench. He could have assigned it to any Bench. He chose one, and that order of assignment is unassailable.

(c) Are the orders of the Chief Justice assigning a matter to a particular Bench at all justiciable and subject to judicial review? Our answer is an unqualified no, for the reasons we have already indicated above.

64. In view of this state of the law, we are not persuaded that the Writ Petition justifies our interference at all. We reject the Writ Petition. In the facts and circumstances of the case, there will be no order as to costs.

65. In view of this, the IA for intervention is infructuous and disposed of as such.

66. We express our gratitude for the able assistance rendered by Mr Kurle, Mr Nargolkar and Mr Desai.

(Madhav J. Jamdar, J) **(G. S. Patel, J)**