REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO 147 OF 2018

ASOK PANDE **..Petitioner**

VERSUS

SUPREME COURT OF INDIA THR.ITS REGISTRAR AND ORS. **..Respondents**

J U D G M E N T

Dr D Y CHANDRACHUD, J

1 The petitioner, who is a member of the Bar, has instituted these proceedings under Article 32 of the Constitution, claiming to be "a public spirited person". He states that he is a "scholar in the field of the Constitution" and that he has filed nearly two hundred petitions in the public interest before the Allahabad High Court, Gujarat High Court and in this Court as well. The reliefs which he seeks are as regards the constitution of Benches of this Court and the Allahabad High Court. What is sought in these proceedings is depicted in the two prayers for relief which are extracted below:

> "(a) to issue a writ of mandamus to the first respondent (Supreme Court of India) to evolve the set Procedure for constituting the benches and allotment of jurisdiction to different benches in Supreme Court. The Petitioner seeks mandamus to the first respondents to have a specific rule in Supreme Court Rules that the three judges bench in Chief Justice court shall consist of the chief justice and two senior most judges and the Constitutional bench shall consist of five senior most judges or three senior most Judges and two junior most judges. The Petitioner also seeks a writ of mandamus to the first respondent to constitute :
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> Supreme Criminal Court
> Supreme PIL Court
> Supreme Tax Court
> Supreme Service Court
> Supreme Land Dispute Court
> Supreme Misc. Matter Court…. Etc.
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> (b) The Petitioner also seeks writ of mandamus to the second respondent i.e. Allahabad High Court to evolve set rules with respect to formation of benches and vesting of jurisdiction to them on the pattern of rules so framed by the Supreme Court. The rule should also contain that the bench of Advocate judges will be constituted with Advocate judges and the bench of service judges coming from eligibility criteria number one of article 217 (3) of Constitution with the judges coming from District judiciary not with Advocate judges."

2 The petitioner has a litany of grievances, many of which are personal to him. The averments contained in the petition indicate that a proceeding was initiated against the petitioner under the Contempt of Courts Act 1971. The petitioner seems to have a grievance with an order which was passed restraining his entry into the premises of the High Court. The nature of his allegations is evinced in the following extract:

> "For prosecuting the Petitioner under the Contempt of Courts Act on the charge of writing a letter to the Chief Justice against

> the Misbehaviour of a judge, a Chief Justice ordered the listing of my case before the bench headed by Sri Sudhir Agrawal J. And he sitting with a judge coming from district judiciary convicted and sentenced me. He sitting with an advocate judges threatened me on the very first date of hearing to restrain my entry in high court except on the date fixed in the contempt case but as the second judge was not agree and so he could not pass the order but as the judge sitting on that also not agree and the order of suspension from practice could not be passed and so he managed the formation of bench with a third judge on the next date. He was a judge coming from district court. He agreed for passing the order of suspension and so the Petitioner was suspended from practice and his entry in the high court was banned. This happened as in place of the regular bench assigned the matters of criminal contempt as per the prevailing roaster, the chief justice nominated a bench headed by Sri Sudhir Agrawal."

3 The petitioner has then proffered his suggestions about how the benches of this Court should be constituted. He suggests that the same principle should be followed in the High Court.

4 We must, at the outset, express our disapproval of the manner in which the petitioner has sought to cast aspersions on the bench of the Allahabad High Court which was assigned with the hearing of the contempt proceedings against the petitioner. What the petitioner has averred is not based or founded upon any judicial order. The aspersions which he has cast on the judges of the High Court are unwarranted. Significantly, the correctness of an order passed by the High Court in the contempt proceedings initiated against the petitioner is not in question in the present proceedings. If the petitioner was aggrieved by a judicial order of the High Court, remedies were available to him under Article 136. As

a member of the Bar, the petitioner should know better than to question the conduct of a judicial proceeding before the High Court in a writ petition under Article 32 of the Constitution. This is yet another instance of reckless allegations being levelled against judges of the High Court in a proceeding where the correctness of the orders passed by the High Court is not in issue; necessary parties to that proceeding are not before the court; and though the legality of a judicial order cannot be questioned in an original proceeding under Article 32.

5 We would now deal with the relief which has been sought in terms of prayer (a). The petitioner seeks the evolution of a "set procedure" for constituting Benches and allotment of cases to different Benches in this Court. Second, as part of the same prayer the petitioner seeks a Mandamus for the making of a rule, in the Rules of Procedure of this Court, to the effect that a three judge Bench in the Court of the Chief Justice should consist of the Chief Justice and the two senior-most judges while a Constitution Bench should consist of five senior-most judges (or three 'senior-most' judges and two 'junior-most' judges). Third, the petitioner seeks a bifurcation of this court into what he describes as a "Supreme criminal court", with similar divisions to hear PIL, tax, service, land disputes and miscellaneous matters (etc.).

6 The Supreme Court Rules, 2013 have been notified with the approval of the President in pursuance of the provisions of Article 145 of the Constitution. Article 145 reads thus:

> "145**.** (1) Subject to the provisions of any law made by Parliament, the Supreme Court may from time to time, with the approval of the President, make rules for regulating generally the practice and procedure of the Court including—
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> (*a*) rules as to the persons practising before the Court;
> (*b*) rules as to the procedure for hearing appeals and other matters pertaining to appeals including the time within which appeals to the Court are to be entered;
> (*c*) rules as to the proceedings in the Court for the enforcement of any of the rights conferred by Part III;
> 1[(*cc*) rules as to the proceedings in the Court
> under 2[article 139A];]
> (*d*) rules as to the entertainment of appeals under sub-clause
> (*c*) of clause (1) of article 134;
> (*e*) rules as to the conditions subject to which any judgment pronounced or order made by the Court may be reviewed and the procedure for such review including the time within which applications to the Court for such review are to be entered;
> (*f*) rules as to the costs of and incidental to any proceedings in the Court and as to the fees to be charged in respect of proceedings therein;
> (*g*) rules as to the granting of bail;
> (*h*) rules as to stay of proceedings;
> (*i*) rules providing for the summary determination of any appeal which appears to the Court to be frivolous or vexatious or brought for the purpose of delay;
> (*j*) rules as to the procedure for inquiries referred to in clause (1) of article 317.
> Rules of Court, etc.
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> (2) Subject to the provisions of clause (3), rules made under this article may fix the minimum number of Judges who are to sit for any purpose, and may provide for the powers of single Judges and Division Courts.
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> (3) The minimum number of Judges who are to sit for the purpose of deciding any case involving a substantial question of law as to the interpretation of this Constitution or for the purpose of hearing any reference under article 143 shall be five:
> Provided that, where the Court hearing an appeal under any of the provisions of this Chapter other than article 132 consists of

> less than five Judges and in the course of the hearing of the appeal the Court is satisfied that the appeal involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the appeal, such Court shall refer the question for opinion to a Court constituted as required by this clause for the purpose of deciding any case involving such a question and shall on receipt of the opinion dispose of the appeal in conformity with such opinion.
> (4) No judgment shall be delivered by the Supreme Court save in open Court, and no report shall be made under article 143 save in accordance with an opinion also delivered in open Court.
> (5) No judgment and no such opinion shall be delivered by the Supreme Court save with the concurrence of a majority of the Judges present at the hearing of the case, but nothing in this clause shall be deemed to prevent a Judge who does not concur from delivering a dissenting judgment or opinion."

7 Order VI of the Supreme Court Rules 2013 deals with the constitution of Division Courts and powers of a Single Judge. Rules 1, 2 and 4 provide thus:

> "1. Subject to the other provisions of these rules every cause, appeal or matter shall be heard by a Bench consisting of not less than two Judges nominated by the Chief Justice.
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> 2. Where in the course of the hearing of any cause, appeal or other proceeding the Bench considers that the matter should be dealt with by a larger Bench, it shall refer the matter to the Chief Justice, who shall thereupon constitute such a Bench for the hearing of it.
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> …
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> 4. If a Bench of less than three Judges, hearing a cause, appeal or matter, is of the opinion that the accused should be sentenced to death it shall refer the matter to the Chief Justice who shall thereupon constitute a Bench of not less than three Judges for hearing it."

Rule 1 indicates that it is the Chief Justice who is to nominate the Judges who would constitute a Bench to hear a cause, appeal or matter. Where a reference

has been made to a larger Bench, the Bench making the reference is required to refer the matter to the Chief Justice who will constitute a Bench.

8 Order XXXVIII of the Supreme Court Rules 2013 deals with applications for enforcement of fundamental rights under Article 32. Rule (1) of Order XXXVIII provides thus:

> "(1) Every petition under article 32 of the Constitution shall be in writing and shall be heard by a Division Court of not less than five Judges provided that a petition which does not raise a substantial question of law as to the interpretation of the Constitution may be heard and decided by a Division Court of less than five Judges, and, during vacation, by the Vacation Judge sitting singly.
> (2) All interlocutory and miscellaneous applications connected with a petition under article 32 of the Constitution, may be heard and decided by a Division Court of less than five Judges, and, during vacation, by the Vacation Judge sitting singly, notwithstanding that in the petition a substantial question of law as to the interpretation of the Constitution is raised."

Rules 12 deals with public interest litigation. Rule 12 is extracted below:

> "12. (1) A public Interest Litigation Petition may commence in any of the following manners:
> (a) as a *suo moto* petition in pursuance of the order of the Chief Justice or Judge of the Court.
> (b) in pursuance of an order of the Chief Justice or a Judge nominated by the Chief Justice on a letter or representation.
> (c) by an order of the Court to treat a petition as a Public Interest Litigation Petition.
> (d) by presentation of a petition in the Court.
> (2) In a petition filed under clause (d) of sub-rule (1) the petitioner shall
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> (i) disclose:
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> (a) his full name, complete postal address, e-mail address, phone number, proof regarding personal identification, occupation and annual income, PAN number and National Unique Identity Card number, if any;

> (b) the facts constituting the cause of action;
>
> (c) the nature of injury caused or likely to be caused to the public;
> (d) the nature and extent of personal interest, if any, of the petitioner (s);
> (e) details regarding any civil, criminal or revenue litigation, involving the petitioner or any of the petitioners, which has or could have a legal nexus with the issue (s) involved in the Public Interest Litigation; and
> (f) whether the concerned Government Authority was moved for relief (s) sought in the petition and if so, with what result.
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> (ii) file and affidavit stating that there is no personal gain, private motive or oblique reason in filing the Public Interest Litigation.
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> (3) The Court may impose exemplary costs on the petitioner (s) if it finds that the petition was frivolous or instituted with oblique or *mala fide* motive or lacks *bona fides*."

9 The position of the Chief Justice of a High Court was elucidated in a judgment of a three judge Bench of this Court in **State of Rajasthan** v **Prakash Chand**[1]. During the course of the judgment the following broad conclusions were formulated in regard to the position of the Chief Justice:

> "(*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 allocate cases to the Benches so constituted.
> (*3*) That the puisne Judges can only do that work as is allotted to them by the Chief Justice or under his directions.
> (*4*) That till any determination made by the Chief Justice lasts, no Judge who is to sit singly can sit in a Division Bench and no Division Bench can be split up by the Judges constituting the Bench themselves and one or both the Judges constituting such Bench sit singly and take up any other kind of judicial business not otherwise assigned to them by or under the directions of the Chief Justice.

[1] (1998) 1 SCC 1

> (5) That the Chief Justice can take congnizance 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. "

10 Recently, a Constitution Bench of this Court in **Campaign for Judicial Accountability and Reforms** v **Union of India**[2] held that the principle which was noticed and recognised in the decision of this court in **Prakash Chand** (supra) in relation to the jurisdiction and authority of the Chief Justice of the High Court "must apply *proprio vigore* as regards the power of the Chief Justice of India". The position of the Chief Justice was reiterated with the following observations:

> **"**The aforesaid position though stated as regards the High Court, we are absolutely certain that the said principle is applicable to the Supreme Court. We are disposed to think so. Unless such a position is clearly stated, there will be utter confusion. Be it noted, this has been also the convention of this Court, and the convention has been so because of the law. We have to make it clear without any kind of hesitation that the convention is followed because of the principles of law and because of judicial discipline and decorum. Once the Chief Justice is stated to be the Master of the Roster, he alone has the prerogative to constitute Benches. Needless to say, neither a two-Judge Bench nor a three-Judge Bench can allocate the matter to themselves or direct the composition for constitution of a Bench. To elaborate, there cannot be any direction to the Chief Justice of India as to who shall be sitting on the Bench or who shall take up the matter as that touches the composition

[2] (2018)1 SCC 196

> of the Bench. We reiterate such an order cannot be passed. It is not countenanced in law and not permissible.
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> An institution has to function within certain parameters and that is why there are precedents, rules and conventions. As far as the composition of Benches is concerned, we accept the principles stated in *Prakash Chand* [*State of Rajasthan* v. *Prakash Chand*, (1998) 1 SCC 1] , which were stated in the context of the High Court, and clearly state that the same shall squarely apply to the Supreme Court and there cannot be any kind of command or order directing the Chief Justice of India to constitute a particular Bench."

11 In view of this binding elucidation of the authority of the Chief Justice of India, the relief which the petitioner seeks is manifestly misconceived. For one thing, it is a well settled principle that no mandamus can issue to direct a body or authority which is vested with a rule making power to make rules or to make them in a particular manner. The Supreme Court has been authorised under Article 145 to frame rules of procedure. A mandamus of the nature sought cannot be issued. Similarly, the petitioner is not entitled to seek a direction that Benches of this Court should be constituted in a particular manner or, as he seeks, that there should be separate divisions of this Court. The former lies exclusively in the domain of the prerogative powers of the Chief Justice.

12 Quite apart from the fact that the relief sought is contrary to legal and constitutional principle, there is a fundamental fallacy in the approach of the petitioner, which must be set at rest. The petitioner seeks the establishment of a binding precept under which a three judge Bench in the Court of the Chief Justice must consist of the Chief Justice and his two senior-most colleagues

alone while the Constitution Bench should consist of five senior-most judges (or, as he suggests, three 'senior-most' and two 'junior-most' judges). There is no constitutional foundation on the basis of which such a suggestion can be accepted. For one thing, as we have noticed earlier, this would intrude into the exclusive duty and authority of the Chief Justice to constitute benches and to allocate cases to them. Moreover, the petitioner seems to harbour a misconception that certain categories of cases or certain courts must consist only of the senior-most in terms of appointment. Every Judge appointed to this Court under Article 124 of the Constitution is invested with the equal duty of adjudicating cases which come to the Court and are assigned by the Chief Justice. Seniority in terms of appointment has no bearing on which cases a Judge should hear. It is a settled position that a judgment delivered by a Judge speaks for the court (except in the case of a concurring or dissenting opinion). The Constitution makes a stipulation in Article 124(3) for the appointment of Judges of the Supreme Court from the High Courts, from the Bar and from amongst distinguished jurists. Appointment to the Supreme Court is conditioned upon the fulfilment of the qualifications prescribed for the holding of that office under Article 124(3). Once appointed, every Judge of the Court is entitled to and in fact, duty bound, to hear such cases as are assigned by the Chief Justice. Judges drawn from the High Courts are appointed to this Court after long years of service. Members of the Bar who are elevated to this Court similarly are possessed of wide and diverse experience gathered during the course of the years of practise at the Bar. To suggest that any Judge would be

more capable of deciding particular cases or that certain categories of cases should be assigned only to the senior-most among the Judges of the Supreme Court has no foundation in principle or precedent. To hold otherwise would be to cast a reflection on the competence and ability of other judges to deal with all cases assigned by the Chief Justice notwithstanding the fact that they have fulfilled the qualifications mandated by the Constitution for appointment to the office.

13 The submissions which have been made by the petitioner in regard to the constitution of benches in the High Courts are, in view of the above discussion, equally lacking in merit. We emphatically disapprove of the insinuations sought to be made against judges drawn from the cadre of the district judiciary. The Constitution has made specific provisions in Article 217(2) for the appointment of judges to the High Court. Judges of the High Court drawn from the Bar or from those who have held judicial office for at least ten years discharge the same functions as judges of the court upon their appointment under Article 217. To suggest that there is a distinction between the two is contrary to constitutional tenets.

14 The Chartered High Courts of Allahabad, Bombay, Calcutta and Madras have a long history of over a hundred and fifty years. Each of them has marked its sesquicentennial. Many High Courts are not far behind in vintage. Some are of a recent origin. Over the course of their judicial history, High Courts have

evolved conventions in matters governing practice and procedure. These conventions provide guidance to the Chief Justice in the allocation of work, including in the constitution of benches. The High Courts periodically publish a roster of work under the authority of the Chief Justice. The roster indicates the constitution of Benches, Division and Single. The roster will indicate the subject matter of the cases assigned to each bench. Different High Courts have their own traditions in regard to the period for which the published roster will continue, until a fresh roster is notified. Individual judges have their own strengths in terms of specialisation. The Chief Justice of the High Court has to bear in mind the area of specialisation of each judge, while deciding upon the allocation of work. However, specialisation is one of several aspects which weigh with the Chief Justice. A newly appointed judge may be rotated in a variety of assignments to enable the judge to acquire expertise in diverse branches of law. Together with the need for specialisation, there is a need for judges to have a broad-based understanding of diverse areas of law. In deciding upon the allocation of work and the constitution of benches, Chief Justices have to determine the number of benches which need to be assigned to a particular subject matter keeping in view the inflow of work and arrears. The Chief Justice of the High Court will have regard to factors such as the pendency of cases in a given area, the need to dispose of the oldest cases, prioritising criminal cases where the liberty of the subject is involved and the overall strength, in terms of numbers, of the court. Different High Courts have assigned priorities to certain categories of cases such as those involving senior citizens, convicts who are in

jail and women litigants. These priorities are considered while preparing the roster. Impending retirements have to be borne in mind since the assignment given to a judge who is due to demit office would have to be entrusted to another Bench when the vacancy arises. These are some of the considerations which are borne in mind. The Chief Justice is guided by the need to ensure the orderly functioning of the court and the expeditious disposal of cases. The publication of the roster on the websites of the High Courts provides notice to litigants and lawyers about the distribution of judicial work under the authority of the Chief Justice. This Court was constituted in 1950. In the preparation of the roster and in the distribution of judicial work, some of the conventions which are adopted in the High Courts are also relevant, subject to modifications having regard to institutional requirements.

15 Underlying the submission that the constitution of Benches and the allocation of cases by the Chief Justice must be regulated by a procedure cast in iron is the apprehension that absent such a procedure the power will be exercised arbitrarily. In his capacity as a Judge, the Chief Justice is *primus inter pares*: the first among equals. In the discharge of his other functions, the Chief Justice of India occupies a position which is *sui* generis. Article 124(1) postulates that the Supreme Court of India shall consist of a Chief Justice of India and other Judges. Article 146[3] reaffirms the position of the Chief Justice

[3] 146. (1) Appointments of officers and servants of the Supreme Court shall be made by the Chief Justice of India or such other Judge or officer of the Court as he may direct:

of India as the head of the institution. From an institutional perspective the Chief Justice is placed at the helm of the Supreme Court. In the allocation of cases and the constitution of benches the Chief Justice has an exclusive prerogative. As a repository of constitutional trust, the Chief Justice is an institution in himself. The authority which is conferred upon the Chief Justice, it must be remembered, is vested in a high constitutional functionary. The authority is entrusted to the Chief Justice because such an entrustment of functions is necessary for the efficient transaction of the administrative and judicial work of the Court. The ultimate purpose behind the entrustment of authority to the Chief Justice is to ensure that the Supreme Court is able to fulfil and discharge the constitutional obligations which govern and provide the rationale for its existence. The entrustment of functions to the Chief Justice as the head of the institution, is with the purpose of securing the position of the Supreme Court as an independent safeguard for the preservation of personal liberty. There cannot be a presumption of mistrust. The oath of office demands nothing less.

Provided that the President may by rule require that in such cases as may be specified in the rule, no person not already attached to the Court shall be appointed to any office connected with the Court, save after consultation with the Union Public Service Commission.

(2) Subject to the provisions of any law made by Parliament, the conditions of service of officers and servants of the Supreme Court shall be such as may be prescribed by rules made by the Chief Justice of India or by some other Judge or officer of the Court authorized by the Chief Justice of India to make rules for the purpose:

Provided that the rules made under this clause shall, so far as they relate to salaries, allowances leave or pensions, require the approval of the President.

(3) The administrative expenses of the Supreme Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the Court, shall be charged upon the Consolidated Fund of India, and any fees or other moneys taken by the Court shall form part of that Fund.

16 Some of the averments which have been made by the petitioner are scandalous. However, we have considered it appropriate to allow the matter to rest with a caution that the petitioner must be more responsible for the manner in which he seeks to draft pleadings in future filings.

17 For the above reasons, we find no merit in the petition. The writ petition is, accordingly, dismissed.

.....CJI
[DIPAK MISRA]

.....J
[A M KHANWILKAR]

.....J
[Dr D Y CHANDRACHUD]

New Delhi;
April 11, 2018.