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Case Comment: High Court of Judicature at Allahabad v Raj Kishore Yadav - Unraveling the Contempt Jurisdiction of the High Court

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INTRODUCTION

The High Court of Judicature at Allahabad has filed a Special Leave Petition to contest a judgment and order from a Division Bench of the Allahabad High Court. The issue revolves around Rule 4(a) of Chapter XXXV-E of the High Court Rules, 1951¹, which was found to conflict with Article 215² of the Constitution of India. The ruling declared Rule 4(a)³ ultra vires, allowing the adjudication of petitions alleging civil contempt arising from the breach or violation of an order, direction, or judgment by a judge other than the original decision-maker. The dispute revolves around the interpretation of Article 215⁴, asserting the High Court's status as a court of record and its implications on contempt petition adjudication. The impugned judges argue that the bench that issued the disputed order should preside over subsequent contempt proceedings,

¹ High Court Rules 1952, r 4(a)

² Constitution of India, art 215

³ High Court Rules 1952, r 4(a)

⁴ Constitution of India 1950, art 215

deeming Rule 4(a)⁵ contrary to constitutional provisions. This appeal delves into judicial administration principles and powers within the High Court framework, raising questions about constitutional mandates.

FACTS OF THE CASE

On 16 December 1989 an Interim order was given by the division bench of Allahabad High Court under a Writ in which the termination of ad hoc teachers' service was stayed following this on 13 May 1993 a single Judge of Allahabad High Court allowed the writ petition directing that the ad hoc teachers at the Kendriya Vidyalaya would be replaced only by freshly impanelled teachers and should not be filled by teachers who are transferred moreover they would be entitled to salary for the period entitled.

Respondent No. 1 applied appropriate action against the concerned respondents in the Writ Petition on October 18, 1993, alleging that they had disobeyed the final order made by the learned Judge in the Writ Petition and so committed contempt of court. By a request dated November 9, 1993, the original writ petitioners claimed that the impugned Rule 4(a)⁶ of the High Court Rules' designation of a learned judge to handle civil contempt cases against the High Court violated Article 215⁷ of the Indian Constitution. Rule 4(a)⁸ of the High Court Rules was ruled to violate Article 215⁹ of the Constitution by the Division Bench of the High Court in the judgment that is the subject of the appeal.

The Division Bench of the High Court of Allahabad had declared Rule 4(a)¹⁰ ultra vires Article 215¹¹ because once a Bench of the High Court has passed an order, any contempt petition arising from the violation of that order should be heard by the same Bench. The rationale behind this decision was that the High Court is a court of record, and this practice aligns with Article 215's

⁵ High Court Rules 1952, r 4(a)

⁶ *Ibid*

⁷ Constitution of India, art 215

⁸ High Court Rules 1952, r 4(a)

⁹ Constitution of India, art 215

¹⁰ High Court Rules 1952, r 4(a)

¹¹ Constitution of India 1950, art 215

intent to preserve the High Court's records and maintain its powers as a superior court of record.¹²

Hence this case revolves around the validity of Rule 4(a) of Chapter XXXV-E of the High Court Rules, 1951¹³, which deals with the procedure for hearing civil contempt petitions in connection with the breach or violation of orders, directions, or judgments issued by a Bench of the High Court.

ISSUES

Therefore, a Special Leave Petition was filed before the Supreme Court of India in which the main issue in this case is the validity of Rule 4(a) of Chapter XXXV-E of the High Court Rules, 1951¹⁴, in the context of Article 215¹⁵ of the Constitution of India. Specifically, the question is whether Rule 4(a)¹⁶, which allows for the hearing of civil contempt petitions by a learned judge other than the one or ones who originally passed the order, direction, or judgment that is alleged to have been violated, is consistent with Article 215.

During the proceedings, it was noted that the Division Bench's decision had been made without notifying the High Court's administrative side, which had drafted the impugned rule. This lack of notice to the administrative side was considered a violation of basic principles of natural justice.

So, an issue arises as to whether the Supreme Court would address the substantive issue of the rule's validity since it has a significant impact on the procedure followed by the High Court in hearing contempt petitions of its orders.

Further, a question arises how does the Division bench consider the merits of the question without issuing notice to the High Court on its administrative side for allowing it to defend this rule?

¹² *High Court of Judicature at Allahabad v Raj Kishore Yadav* (1997) 3 SCC 11

¹³ High Court Rules 1952, r 4(a)

¹⁴ *Ibid*

¹⁵ Constitution of India 1950, art 215

¹⁶ High Court Rules 1952, r 4(a)

ARGUMENTS FROM BOTH SIDES

The case involves a dispute over the termination of services of ad hoc teachers at Kendriya Vidyalaya. On 16-12-1989, an interim order was passed by a Division Bench of the High Court of Allahabad, which was later upheld by a Single Judge of the High Court, R.S. Dhavan, J., who ordered the replacement of teachers by freshly impanelled recruits and salary.

The appellant-High Court and some respondents' counsel argue that the High Court's view is incorrect, and Respondent No. 1, the original applicant, has not appeared to contest the proceedings, despite being served. This contradicts the original High Court's original decision.

Respondent 1 moved an action against the respondents, alleging they committed contempt of court by flouting the final order. The original petitioners argued that the nomination of a judge for hearing civil contempt of the High Court violated Article 215¹⁷. The Division Bench of the High Court declared Rule 4(a)¹⁸ of the High Court Rules ultra vires Article 215¹⁹ of the Constitution to the extent indicated in the judgment.

The counsel for the appellant-High Court and some respondents argue that the High Court's view is incorrect, and Respondent 1, who was the original applicant, has not been able to appear and contest the proceedings, despite being served.

Article 216²⁰ establishes the Constitution of High Courts, which consists of a Chief Justice and other judges appointed by the President. The High Court of Allahabad is one such High Court, validly traced to Article 225²¹. The article states that any restrictions on the exercise of original jurisdiction by any High Court regarding revenue or collection matters that were subject to restrictions before the Constitution's commencement will no longer apply to the exercise of such jurisdiction. This ensures that the High Court remains a court of record and upholds the principles of the Constitution.

¹⁷ Constitution of India 1950, art 215

¹⁸ High Court Rules 1952, r 4(a)

¹⁹ Constitution of India 1950, art 215

²⁰ Constitution of India 1950, art 216

²¹ Constitution of India 1950, art 225

Before the Constitution, existing High Courts had jurisdiction based on Section 223 of the Government of India Act, 1935²². This Act stated that the jurisdiction of any existing High Court and the powers of its Judges about the administration of justice, including the power to make rules of court and regulate sittings, would be the same as before the establishment of the Dominion. However, no High Court had original jurisdiction in matters concerning revenue or any act ordered or done in the collection thereof according to the usage and practice of the country or the law at the time being in force.

Section 108 of the Government of India Act 1915²³, also regulated the administration of justice by the High Courts concerned before the establishment of the Dominion. This Act allowed each High Court to provide for the exercise of the original and appellate jurisdiction vested in the court by one or more Judges or division courts constituted by two or more Judges. The Chief Justice of each High Court determined which Judge in each case should sit alone and which Judges of the court, whether with or without the Chief Justice, should constitute the several division courts.

It was argued that the repeal of Section 108 of the Government of India Act, 1915²⁴ and subsequent amendments to its provisions in Section 223²⁵, Government of India Act of 1935, and later in Article 225 of the Constitution of India²⁶, did not result in any corresponding amendment of clause 15 of the letters patent. This means that the High Court had no power to make rules in 1940 when the Trade Marks Act was enacted under the repealed section. However, the High Court's power conferred by Section 108²⁷ still exists and has not been affected by the Government of India Act, 1935, or the new Constitution. The High Court still enjoys the same unfettered power as under Section 108 of the Government of India Act, 1915, including making rules and determining whether an appeal should be heard by one or more judges or Division Courts consisting of two or more High Court judges.

²² Government of India Act 1935, s 223

²³ Government of India Act 1915, s 108

²⁴ *Ibid*

²⁵ Government of India Act 1935, s 223

²⁶ Constitution of India 1950, art 225

²⁷ Government of India Act 1915, s 108

JUDGMENT AND RATIONALE OF THE COURT

The rules that are applicable and related to the instant case which would help in better understanding and analysis of the case are:

Rule 4(a) of Chapter XXXV-E of the High Court Rules, 1951²⁸

Civil and criminal contempt's presentation after Stamp reporter:

a. Every case relating to civil contempt shall be presented before the Bench 107 constituted for that purpose.

107 (Delete the word 'of a Single Judge' vide Notif. No.296/VIII-C-2 dt. 1.6.05 published in U.P. Gazette Part-II dated 6.8.05)

b. provided that every case of contempt of Court presented before the Court shall bear the report of the Stamp Reporter as to the sufficiency of court fee paid and about limitation. References relating to contempt of court received on the administrative side from the subordinate courts shall, along with the office report with respect thereto, be laid before the Chief Justice, who shall have the discretion to file the same or to order that the same be laid before the Bench concerned, A [at Allahabad or Lucknow as the case might be] for further proceedings in connection with the case.

The validity and legality of the above rule with Article 215²⁹ of the Constitution of India is one of the main issues in the present case.³⁰

Article 215: High courts to be court of Record

Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for the contempt of itself.

²⁸ High Court Rules 1952, r 4(a)

²⁹ Constitution of India 1950, art 215

³⁰ High Court Rules 1952, r 4(a)

The division bench judgment on 6th November 1996 held Rule 4(a) of chapter XXXV-E³¹ to be ultra vires Article 215³².

The Special Leave Petition was filed by the High Court of Allahabad against the order of the Division bench. The learned judge mentioned that the High Court is a court of record and once the bench of the High Court has passed an order or direction breach of which is complained by the aggrieved party, the same bench which has the record must hear the contempt petition while the impugned rule permits hearing of such petition by any other judge of High court which flies in face of Article 215³³.

Article 225: Jurisdiction of Existing High Court

Subject to the provisions of this constitution and the proviso of any law of the appropriate legislature made by power conferred on the legislature by this constitution, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the judges thereof about the administration of justice in the court, including any power to make rules of court and to regulate the sitting of the court and of members thereof sitting alone or in Division Court, shall be the same as immediately before the commencement of this constitution.

Hence by reading this article, it is clear that the High Court by its own rule can provide for the exercise of its jurisdiction. By a single or more judges or by a Division consisting of two or more judges, moreover, it is upon the Chief Justice of the concerned High Court to decide how many judges will sit in a case alone or with the chief justice or not.

Section 11, The Contempt of Court Act, 1971

Power of the High Court to try offenses committed or offenders found outside the jurisdiction. A High Court shall have jurisdiction to inquire into or try a contempt of itself or any court subordinate to it, whether the contempt is alleged to have been committed within or

³¹ *Ibid*

³² Constitution of India 1950, art 215

³³ *Ibid*

outside the local limits of its jurisdiction, and whether the person alleged to be guilty of contempt is within or outside such limits³⁴.

Section 23, The Contempt of Court Act 1971

Power of Supreme Court and High Courts to make rules. The Supreme Court or, as the case may be, any High Court, may make rules, not inconsistent with the provisions of this Act, providing for any matter relating to its procedure.³⁵

In the present case how the original jurisdiction can be exercised is a matter which can be legitimately governed by the relevant rules of the High Court on its administrative side.

The above two sections of The Contempt of Court Act, 1971³⁶ talk about the jurisdiction and power of & the high court to try cases of contempt of itself while the Supreme Court can make rules.

ANALYSIS OF THE JUDGMENT

Application:

Division Bench's Ruling on Rule 4(a):

- The Division Bench of the High Court ruled that Rule 4(a)³⁷ violated Article 215³⁸ and ordered that any contempt case resulting from a breach of a High Court order be heard by the same Bench that issued the order in the first place. This decision is by the purpose of Article 215³⁹, which establishes High Courts as courts of record with the authority to punish for self-inflicted contempt.
- The Division Bench's analysis of Article 215⁴⁰ is by its contention that the High Court's authority and reputation should be safeguarded by ensuring that matters involving the

³⁴ Contempt of Court Act 1971, s 11

³⁵ Contempt of Court Act 1971, s 23

³⁶ Contempt of Court Act 1971

³⁷ High Court Rules 1952, r 4(a)

³⁸ Constitution of India 1950, art 215

³⁹ *Ibid*

⁴⁰ *Ibid*

alleged violation of its orders are handled by the same Bench that issued the order in the first place. This approach acknowledges the High Court's standing as a court of record and seeks to maintain consistency in the administration of court orders. To ensure impartiality or efficiency, it is crucial to take into account whether there may be circumstances in which flexibility in assigning judges is required.

Lack of Notice to the Administrative Side:

- The administrative side that drafted Rule 4(a)⁴¹ was not informed of the Division Bench's decision-making process. The fundamental rules of natural justice were allegedly broken by this lack of notice.
- There are legitimate issues raised concerning procedural fairness due to the administrative side's lack of notice. All relevant stakeholders, including the administrative branch responsible for developing such regulations, should preferably be included in decision-making that affects court rules and processes. The values of openness and due process may be compromised by failing to give notice. But it's crucial to consider whether the Division Bench's decision was materially affected by the absence of notice and whether it directly affects Rule 4(a)⁴² constitutionality.
- In the case of *Maneka Gandhi v Union of India*, the Supreme Court of India emphasized the importance of natural justice and stated that the principles of natural justice are not confined to a particular set of facts. While this case may not directly relate to contempt rules, it underscores the broader importance of adhering to natural justice principles in administrative and legal proceedings.⁴³

Impact on the Procedure Followed by the High Court:

- The Supreme Court's decision to examine the important issue of the rule's legality is the most crucial one in this case since it significantly affects how the High Court considers petitions for contempt of its judgments.

⁴¹ High Court Rules 1952, r 4(a)

⁴² *Ibid*

⁴³ *Maneka Gandhi v Union of India* (1978) 1 SCC 248

- An important factor to take into account is how the Supreme Court's ruling may affect the practices of the High Court. Rule 4(a)⁴⁴ may need to be changed significantly in the High Court if the Supreme Court upholds the Division Bench's finding that it violates Article 215⁴⁵ if it is implemented. The management of cases and the delivery of justice may be significantly impacted by this. The Supreme Court must, however, carefully strike a balance between the requirement to defend constitutional principles and operational issues linked to the High Court's operation.
- Procedural fairness is a fundamental aspect of the rule of law. It emphasized that procedures must be fair and just, balancing administrative efficiency with the protection of individual rights. Natural justice, administrative tribunals, the power of judicial review, and the Right to Information Act, 2005⁴⁶, are some examples of how the principle of procedural fairness is applied in Indian laws. The principle of procedural fairness is essential to protecting individual rights, promoting transparency and accountability, and upholding the rule of law.

CONCLUSION

The appeal brought before the Supreme Court in the form of a Special Leave Petition was allowed, hence the order dated 6th of November 1993 was quashed and set aside and held that clause (a) of rule 4 of chapter XXXV-E of rules of High Court of Allahabad⁴⁷ is valid and not inconsistency with Article 215⁴⁸.

The learned judges analyzed 3 situations where they tried to see whether the impugned rule could affect the jurisdiction of the High Court and whether it could come in conflict with Article 215⁴⁹ of the Constitution of India.

- i. Violation of interim order of the High Court passed in matters which are pending for disposal

⁴⁴ High Court Rules 1952, r 4(a)

⁴⁵ Constitution of India 1950, art 215

⁴⁶ Right to Information Act 2005

⁴⁷ High Court Rules 1952, r 4(a)

⁴⁸ Constitution of India 1950, art 215

⁴⁹ *Ibid*

- ii. Violation of interim order of the High Court in a pending matter which is part heard before a bench of the High Court.
- iii. If contempt alleged is of any final order of the High Court in a disposed matter, the record of the case can be conveniently called for from the record room without disturbing the working of the High Court.

In none of the above situations, the court found that the hearing of a civil contempt case by a bench of the High Court other than the one which had passed the order, non-compliance is in issue, would at all affect the jurisdiction of the High Court as superior court of record.

The aforesaid rule is mainly used before the subordinate courts which generally consist of sole judge. In these cases, the applications must be filled before the same court and would go to the same judge or his successor in office. This is not the case with High Courts since they are superior courts of law.

The court referred to the case of *National Thread Co. Ltd v James Chadwick and Bros Ltd.* to examine whether enacting impugned rule the High Court on its administrative side had encroached upon any forbidden field. A bench of three judges deciding the case had to examine whether an order passed by a learned single judge of the High Court under the Trade Mark Act, 1940 could be appealed under clause 15 of the letters patent applicable to the Bombay High Court.

Thus, it was held that the enactment of the impugned rule Squarely falls within the administrative power of the High Court well preserved by the aforesaid provisions. However, the learned judges wanted to declare the Impugned rile to be ultra vires on the grounds that it conflicted with Article 215^{50,51}

In the case of *Naresh Shridhar Mirajkar v State of Maharashtra*, a constitutional bench of 9 judges made the following observation:

⁵⁰ *Ibid*

⁵¹ *National Sewing Thread Co Ltd v James Chadwick & Bros Ltd* (1953) 1 SCC 794

- i. The High Court has the power to determine the question about its jurisdiction, the court observed it is for the court to consider whether any matter falls within its jurisdiction or not, unlike the court of limited jurisdiction, the superior court is entitled to determine for itself the question of jurisdiction
- ii. Has inherent power to punish for its contempt.⁵²

Hence keeping in mind, the original jurisdiction under the Contempt of Court Act 1971, in connection to civil contempt of the High Court, the Court is not exercising any review jurisdiction wherein the proceeding may be placed before the same judge or judges. Therefore, contempt jurisdiction is an independent jurisdiction of the original nature.

⁵² *Naresh Shridhar Mirajkar v State of Maharashtra* (1966) SCC OnLine SC 10