



IN THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

WP(C) No.3927 of 2023

1. Shri Tari Hai, Resident of Gengi Village, P.O. & P.S. Gensi, Lower Siang District, Arunachal Pradesh.
2. Shri Tapu Nyicyor, Resident of Siberite Village, P.O. & P.S. Gensi, Lower Siang District, Arunachal Pradesh.
3. Tadak @ Jumdak Hale, Resident of Siberite Village, P.O. & P.S. Gensi, Lower Siang District, Arunachal Pradesh.

.....Writ Petitioners

-Versus-

1. The Gauhati High Court [Principal Seat], represented by the Registrar General, Gauhati High Court, Guwahati, Assam.
2. The Gauhati High Court, Itanagar Permanent Bench, represented by the Registrar, Gauhati High Court, Itanagar Permanent Bench, Yupia.

.....Respondents

3. The Gauhati High Court Itanagar permanent Bench Bar Association [GHCIPBBA], represented by the President, GHCIPBBA, Yupia.

.....Pro-forma-Respondent

- BEFORE -

HON'BLE THE CHIEF JUSTICE
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

For the Petitioners : Mr. T. Pertin, Advocate [through VC].

For the Respondent(s) : Mr. U.K. Nair, Senior Standing Counsel, Gauhati High Court assisted by Mr. H.K. Das, Advocate.

: Mr. T.T. Tara, Advocate for the Gauhati High Court
Itanagar Permanent Bench Bar Association [through
VC].

Date of Hearing : 28.08.2023

Date of Judgment : 16.10.2023.

JUDGMENT & ORDER

[Sandeep Mehta, CJ]

The preceding facts relevant and essential for disposal of this writ petition are noted hereinbelow.

2. The writ petitioners herein, filed 3(three) separate writ petitions, i.e. (i) WP(C) No.363(AP)/2022 [*Tari Hai -Vs- NHPC & Ors.*], (ii) WP(C) No.366(AP)/2022 [*Tapu Nyicyor -Vs- NHPC & Ors.*] and (iii) WP(C) No.201(AP)/2023 [*Tadak @ Jumdak Hale -Vs- NHPC & Ors.*], respectively, at the Itanagar Permanent Bench for challenging the acquisition of their lands for construction of 2000 MW Lower Subansiri Hydro Power Project at Gerukamukh in Dhemaji district, Assam.

The petitioners have raised a grievance in the aforesaid writ petitions that the NHPC, being the executive agency, had not deposited the compensation amount as assessed and hence, the writ petitions aforesaid came to be filed before the Itanagar Permanent Bench. Various other writ petitions pertaining to the same controversy came to be filed at the Itanagar Bench in the intervening period.

In the meantime, a writ petition, being WP(C) No.5402/2020 came to be filed in relation to the same acquisition proceedings at the Principal Seat, Guwahati under the title of ***NHPC -Vs- The State of Arunachal Pradesh & Ors.*** One Shri Appu Raj

Gogoi, Advocate moved an application seeking transfer of the aforesaid writ petition [WP(C) No.5402/2020] to the Itanagar Permanent Bench on the ground that some other matters relating to the same issue were pending at the Itanagar Permanent Bench.

3. The Chief Justice of Gauhati High Court (High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh), rejected the prayer for transfer of the said writ petition to Itanagar Permanent Bench and at the same time, passed an order dated 09.03.2022 exercising administrative powers conferred by virtue of proviso to Clause 2 of the Notification No.K. 11018/6/95.U.S.I. dated 18.07.2000 in the following terms:-

“Not required and similar matters be transferred to Principal Bench”.

Later on, based on the said order, other similar writ petitions filed at the Itanagar Permanent Bench also came to be transferred to the Principal Seat at Guwahati vide order dated 30.11.2022.

4. Learned counsel Mr. T. Pertin filed an application dated 13.03.2023 requesting transfer back of 26 writ petitions pertaining to the land acquisition for the 2000 MW Lower Subansiri Hydro Power Project at Gerukamukh in Dhemaji district, Assam to the Itanagar Permanent Bench. The said prayer of Mr. T. Partin, learned counsel was rejected by the administrative order dated 31.03.2023.

5. The administrative order dated 09.03.2022 passed by the Chief Justice, Gauhati High Court directing transfer of the two writ petitions, i.e. WP(C) No.206 (AP)/ 2021 and WP(C)

No.208(AP)/2021, and the subsequent transfer of other analogous writ petitions, is subjected to challenge in this writ petition.

6. Mr. U.K. Nair, learned senior counsel, assisted by Mr. H.K. Das, learned counsel appearing for the respondent Gauhati High Court submitted that they are not desirous of filing any affidavit in this matter and that the matter may be heard as such.

7. Mr. T. Pertin, learned counsel representing the petitioners addressed the Court through VC and advanced extensive oral submissions in order to emphasize that the orders directing transfer of the writ petitions filed by the petitioners and other similar writ petitions from Itanagar Permanent Bench to the Principal Seat at Guwahati, are without jurisdiction and unsustainable in the eyes of law.

8. Mr. Pertin firstly raised a preliminary objection that the Chief Justice is required to recuse from hearing of the instant writ petition by referring to the Latin maxim *nemo iudex in causa sua*, which means that one should not be Judge in his own cause.

9. Without prejudice to the above submission/ objection, Mr. Pertin referred to the Notification No.K. 11018/6/95.U.S.I. dated 18.07.2000 and so also to the Order No.41, dated 26.10.2005 and urged that in view of the fact that the said order is still in force, the Chief Justice, acting as the Master of Roster cannot pass administrative orders transferring cases from Itanagar Permanent Bench to the Principal Seat at Guwahati.

The Notification dated 18.07.2000 and the Order No.41 dated 26.10.2005 are reproduced hereinbelow for the sake of ready reference:

“GAUHATI HIGH COURT (ESTABLISHMENT OF A PERMANENT BENCH AT ARUNACHAL PRADESH ORDER, 2000

Notification No.K.11018/6/95.US.I dated 18.7. 2000

In exercise of the powers conferred by sub-section(2) of Section 24 of the State of Arunachal Pradesh Act, 1986 (69 of 1986), read with Sub-Section (2) of Section 31 of the North-Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), the President, after consultation with the Chief Justice of the Gauhati High Court and the Governor of Arunachal Pradesh, is pleased to make the following Order, namely:

1. Short title and commencement.-(1) This Order may be called the Gauhati High Court (Establishment of a Permanent Bench at Itanagar) Order, 2000.

(2). It shall come into force on the 12th day of August, 2000.

2. Establishment of a permanent Bench of the Gauhati High Court at Itanagar- There shall be established a permanent Bench of the Gauhati High Court at Itanagar and such Judges of the Gauhati High Court, being not less than one in number, as the Chief Justice of that High Court may, from time to time nominate, shall sit at Itanagar in order to exercise the jurisdiction and powers for the time being vested in the Gauhati High Court in respect of cases arising in the State of Arunachal Pradesh.

Provided that the Chief Justice of that High Court may, in his discretion, order that any case or class of cases arising in the State of Arunachal Pradesh shall be heard at Guwahati.”

(Emphasis supplied)

“The GAUHATI HIGH COURT AT GUWAHATI
ORDER OF THE HON’BLE CHIEF JUSTICE (ACTING)

ORDER NO.41

Date: 26.10.2005

In supersession of all the earlier orders issued in this behalf, it is hereby ordered that all the cases pertaining to the permanent Benches of Gauhati High Court, namely Kohima (Nagaland), Shilling (Meghalaya), Imphal (Manipur), Agartala (Tripura), Aizawl (Mizoram) and Itanagar (Arunachal Pradesh), whether filed at earlier point of time or to be filed in future at the Principal Seat for absence of appropriate Bench at the Outlying Benches, shall stand transferred to the respective Benches of the High Court immediately after completion of motion and/or admission.”

He further urged that the administrative order dated 09.03.2022, whereby the writ petitions, WP(C) No.206(AP)/2021 and WP(C) No.208(AP)/2021 came to be transferred to Principal

Seat at Guwahati, was passed in gross violation of principles of natural justice as the writ petitioners therein were not heard before transferring their writ petitions from Itanagar Permanent Bench to the Principal Seat and also because the order does not set out any reasons and hence, the administrative decision, having been rendered without assigning reasons, is unsustainable in the eyes of law.

10. In support of his contentions, Mr. Pertin placed reliance on Hon'ble the Supreme Court judgment in the case of ***State of Punjab -Vs- Bandeep Singh & Ors.***, reported in ***(2016) 1 SCC 724*** and urged that every decision of executive or administrative nature must be a composite and self-sustaining one, in that it should contain all the reasons which prevailed while taking the decision to arrive at the conclusion. Mr. Pertin also relied upon the Division Bench judgment of this High Court (the then Shillong Bench) in the case of ***Hindustan Paper Corporation Ltd. & Anr. -Vs- Synergy Composites Pvt. Ltd.***, reported in ***2005 (3) GLT 1***, wherein paragraph 2 of the Notification dated 18.07.2000 was interpreted. He also relied upon the judgment of the Hon'ble Supreme Court in the Case of ***Rajasthan High Court Advocates Association -Vs- Union of India***, reported in ***(2001) 2 SCC 294*** and urged that the Principal Seat at Guwahati cannot extend its jurisdiction to matters wherein, no part of cause of action has taken place in the State of Assam.

As per Mr. Pertin, in view of the interpretation given to the Notification dated 18.07.2000 by the Division Bench of this Court in ***Hindustan Paper Corporation Ltd.*** (supra), a different view is not permissible and that this Court is bound by the ratio of the said

decision and should feel persuaded to set aside the administrative order dated 09.03.2022 and the consequential order directing transfer of the contentious writ petitions from Itanagar Permanent Bench to the Principal Seat at Guwahati.

11. Mr. Pertin referred to Sub-Section (2) of Section 24 of the State of Arunachal Pradesh Act, 1986 (hereinafter referred to as "Act of 1986") read with Sub-Section (2) of Section 31 of the North-Eastern Areas (Re-organisation) Act, 1971 (hereinafter referred to as "Act of 1971") and contended that the Itanagar Permanent Bench was established vide Notification No.K.11018/6/95.U.S.I., dated 18.07.2000. The decision to establish the Itanagar Permanent Bench was taken with consultation and concurrence of the Chief Justice of the Gauhati High Court. Hence, the Chief Justice is a part and parcel of the decision so arrived at. He further urged that the Act of 1986 is an Act passed by the Parliament of India to provide for the establishment of Arunachal Pradesh, a State within the meaning of Articles 1, 2 and 3 of the Constitution of India. Hence, the State of Arunachal Pradesh is an independent and a separate State with all powers and authority bestowed upon a State under the Constitution of India and the laws framed thereunder. He referred to Article 214 of the Constitution of India and urged that the Constitution mandates that each State shall have a High Court. Article 231 of the Constitution was referred to with a submission that a common High Court can be established for two or more States.

12. Mr. Pertin strenuously argued that the Itanagar Permanent Bench in nature, character, power and functions, is a separate High Court for the State of Arunachal Pradesh and hence,

all matters with cause of action having arisen in the State of Arunachal Pradesh, are required to be heard at Itanagar Permanent Bench. By directing transfer of the writ petitions of the petitioners from Itanagar Permanent Bench to the Principal Seat at Guwahati and that too without assigning reasons, the dignity of the Bench has been lowered. He urged that by this transfer, a general perception may be created casting doubts regarding the competence and manner of functioning of the Judges at the Itanagar Permanent Bench.

13. As per Mr. Pertin, any order passed in exercise of power and authority under the Act of 1986 has to be read homogeneously with the letter and spirit of Articles 1, 2 and 3 of the Constitution of India and thus, the State of Arunachal Pradesh as well as the Itanagar Permanent Bench of the Gauhati High Court have to be treated as independent and separate entities under the Constitution of India.

His further contention was that the Notification dated 18.07.2000 bifurcates the territorial jurisdiction of the Gauhati High Court and defines the territorial jurisdiction to be exercised by the Itanagar Permanent Bench through paragraph 2 thereof.

Mr. Pertin urged that the discretionary power conferred by virtue of the proviso, cannot be construed as authorizing the Chief Justice to negate the intent and purpose of paragraph 2 of the Notification. The proviso is meant to facilitate removal of difficulties in implementation of the primary purpose of the Notification dated 18.07.2000 rather than to negate it.

14. Referring to the order dated 09.03.2022, whereby the writ petitions filed by the petitioners and other similar petitions filed at

the Itanagar Permanent Bench have been transferred to the Principal Seat, Mr. Pertin urged that the Principal Seat at Guwahati, cannot exercise dominance over the Outlying Benches at Nagaland, Mizoram and Arunachal Pradesh. Each Bench has its own distinct identity and separate Registry to look after the daily activities independently. Daily cause-lists, etc. to conduct the business in these Benches, are published under the authority of the Chief Justice.

15. As per Mr. Pertin, the concept of the Chief Justice as the Master of Roster has to be confined to each Bench and under this principle, the Chief Justice has to exercise the powers independently and separately for the particular Bench. While acting as the Master of Roster for the Itanagar Permanent Bench, the role of the Chief Justice is limited to the said Bench and cannot overlap or transgress upon the similar role *qua* the Principal Seat at Guwahati or the Benches at Mizoram or Nagaland.

16. Mr. Pertin contended that the Chief Justice of the Gauhati High Court, by exercising power under the proviso to paragraph 2 of the Notification dated 18.07.2000, cannot create a new forum or transfer or redefine the jurisdiction of the Principal Seat or the Benches unless the same is required to be done for removal of the difficulties in implementation of paragraph 2 of the Notification dated 18.07.2000.

17. Another fervent contention raised by Mr. Pertin was that as the "Itanagar Permanent Bench" is functioning at Itanagar, Arunachal Pradesh, the Principal Seat at Guwahati (which Mr. Pertin surprisingly referred to as "the Assam Bench" without any

basis) has no jurisdiction to deal with the matters/cases arising within the State of Arunachal Pradesh.

18. Mr. Pertin submitted that the impugned transfer order tantamounts to interfering in the jurisdiction of the Itanagar Permanent Bench and bestowing jurisdiction to another Bench of the Gauhati High Court and also tantamounts to defining the cause of action beyond the jurisdiction which is in gross violation of the Notification dated 18.07.2000 and the Act of 1986 passed by the Parliament. He contended that the Chief Justice cannot indirectly take away the jurisdiction to be exercised by the "Itanagar Permanent Bench" to the "Assam Bench". The litigant has the exclusive right to approach the Court where the cause of action arose and the forum cannot be shifted without the knowledge and consent of the litigant and to his disadvantage. The right of the litigant to have the case heard by the Bench having jurisdiction cannot be obliterated by exercising discretionary power conferred upon the Chief Justice. He urged that no part of cause of action in the transferred writ petitions arose within the State of Assam. Neither the State of Assam nor its officials are arrayed as party respondents in the writ petitions. The petitioners do not desire that their cases should be heard at Guwahati and they were not taken into confidence before transferring their cases from one High Court to another. The entire process of transfer was undertaken in a surreptitious manner behind the back of the petitioners and that the impugned order was issued in gross violation of principle of natural justice. No litigant sought transfer of cases from Itanagar Permanent Bench to the Principal Seat at Guwahati. Such random and arbitrary exercise of the discretionary

power by the Chief Justice would dilute the jurisdiction of the Itanagar Permanent Bench and also casts a shadow on the competence and integrity of the Presiding Judges at the Itanagar Permanent Bench.

On these grounds, Mr. Pertin implored the Court to accept the writ petition and recall/set aside the impugned order(s) and restore the transferred writ petitions to the Itanagar Permanent Bench.

19. Mr. T.T. Tara, learned Advocate cum President of the Gauhati High Court Itanagar Permanent Bench Bar Association, on principles, supported the submissions advanced by Mr. Pertin. However, he did not approve the submission advanced by Mr. Pertin, wherein the aspersion of bias was levelled while making the submission that the Chief Justice, having passed the order of transfer of the writ petitions on administrative side, should not hear the present writ petition and recuse from the matter.

Mr. Tara fairly submitted that it is expected that the Chief Justice, while exercising the powers under Proviso 2, would act prudently and with a considered thought on the advantages/disadvantages of the litigants and no case would be transferred causing prejudice to the litigants.

Mr. T.T. Tara also placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Bandeep Singh** (supra) to buttress the contention that the decision of an administrative or executive nature must be a composite and self sustaining one, in that, it should contain all the reasons which prevailed on the official taking decision to arrive at its conclusion. It was further laid down in the said judgment that any authority cannot be permitted to

travel beyond the stand adopted and expressed by it in the impugned action.

20. *Per contra*, Mr. U.K. Nair, learned senior Advocate assisting the Court as counsel for the Gauhati High Court, vehemently and fervently opposed the submissions of Mr. Pertin. He contended that by way of this writ petition, the petitioners are trying to create a confusion in between the cause of action/jurisdiction and the power of Chief Justice to transfer matter/matters from any of the Outlying Benches to the Principal Seat.

Mr. Nair referred to Section 18 of the Act of 1986 and pointed out that the statutory provision postulates that there shall be a common High Court for the States of Assam, Nagaland, Mizoram and Arunachal Pradesh to be called the Gauhati High Court.

Section 18 of the Act of 1986 reads as below:

“18. Common High Court for Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram and Arunachal Pradesh.—(1) On and from the appointed day,—

(a) there shall be a common High Court for the States of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram and Arunachal Pradesh to be called the Gauhati High Court (the High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram and Arunachal Pradesh) (hereinafter referred to as the common High Court);

(b) the Judges of the High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura and Mizoram holding office immediately before that day shall, unless they have elected otherwise, become on that day the Judges of the common High Court.

(2) The expenditure in respect of the salaries and allowances of the Judges of the common High Court shall be allocated amongst the States of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura in such proportion as the President may, by order, determine.”

Mr. Nair also referred to Section 24 of the Act of 1986 which reads as below:

“24. Principal seat and other places of sitting of the common High Court.—(1) The principal seat of the common High Court shall be at the same place at which the principal seat of the High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura and Mizoram is located immediately before the appointed day.

(2) The President may, by notified order, provide for the establishment of a permanent bench or benches of the common High Court at one or more places within the territories to which the jurisdiction of the High Court extends, other than the principal seat of the High Court, and for any matters connected therewith:

Provided that before issuing any order under this sub-section, the President shall consult the Chief Justice of the common High Court and the Governor of the State in which the bench or benches is or are proposed to be established.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), the Judges and division courts of the common High Court may also sit at such other place or places in the States of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram and Arunachal Pradesh as the Chief Justice may, with the approval of the Governor of the State concerned, appoint.”

Referring to Sub-Section (3) of Section 24 of the Act of 1986, Mr. Nair urged that the statutory provisions make it clear that the Judges and Division Courts of the common High Court can sit and hold Court at any other place or places in the State of Assam, Nagaland, Mizoram and Arunachal as the Chief Justice may, with the approval of the Governor of the State concerned, appoint.

He urged that Sub-Section (2) of Section 24 makes it clear that a permanent Bench can only be established for exercising jurisdiction within the territories other than the Principal Seat of the High Court to which the jurisdiction of the High Court extends. Thus, as per Mr. Nair, notwithstanding the establishment of a Permanent Bench, the jurisdiction of the Principal Seat of the High Court over all the areas within its territory continues to subsist.

Mr. Nair submitted that this provision was not considered by the Division Bench of this Court in the case of **Hindustan Paper Corp. Ltd.** (supra). Hence, ratio of the judgment in **Hindustan Paper Corp. Ltd.** (supra) is of no help to the petitioners in their endeavour to question the legality and validity of the impugned decision to transfer the writ petitions from Itanagar Permanent Bench to the Principal Seat.

Mr. Nair urged that the decisions in **Rajasthan High Court Advocates Association** (supra) and **Hindustan Paper Corp. Ltd.** (supra) relied upon by learned counsel for the petitioners, deal with the concept of cause of action/jurisdiction and do not touch upon the powers of the Chief Justice to transfer a case/cases from the Outlying Benches to the Principal Seat and hence, the challenge laid by the petitioners to the order of transfer, is misconceived.

Mr. Nair also referred to Sections 28 and 31 of the North-Eastern Areas (Re-organisation) Act, 1971, which are reproduced herein below for the sake of ready reference and urged that the very opening words of Section 28 (1)(b) of the Act postulate that there shall be a common High Court for Assam, Nagaland, Meghalaya, Manipur and Tripura. He referred to the proviso to 28(1)(c) (inserted by Act 26 of 2012), which contemplates that a common High Court for the States of Assam, Arunachal Pradesh, Mizoram and Nagaland and shall cease to have its jurisdiction, powers and authority for the States of Meghalaya, Manipur and Tripura.

Section 28 of the Act of 1971 reads as below:

“28. Common High Court for Assam, Nagaland, Meghalaya, Manipur and Tripura.—(1) On and from the appointed day,—

(a) the High Court of Assam and Nagaland shall cease to function and is hereby abolished;

(b) there shall be a common High Court for the States of Assam, Nagaland, Meghalaya, Manipur and Tripura to be called the Gauhati High Court (the High Court of Assam, Nagaland, Meghalaya, Manipur and Tripura);

(c) the Judges of the High Court of Assam and Nagaland holding office immediately before that day shall, unless they have elected otherwise, become on that day the Judges of the common High Court:

[Provided that on and from the commencement of the North-Eastern Areas (Reorganisation) and Other Related Laws (Amendment) Act, 2012, the common High Court shall be the High Court for the States of Assam, Arunachal Pradesh, Mizoram and Nagaland and shall cease to have its jurisdiction, powers and authority for the States of Meghalaya, Manipur and Tripura.]

(2) Nothing in clause (a) of sub-section (1) shall prejudice or affect the continued operation of any notice served, injunction issued, direction given or proceedings taken before the appointed day by the High Court of Assam and Nagaland under the powers then conferred upon that Court.”

Section 31 of the Act of 1971 reads as below:

“31. Principal seat and other places of sitting of the common High Court.—*(1) The principal seat of the common High Court shall be at the same place at which the principal seat of the High Court of Assam and Nagaland is located immediately before the appointed day.*

(2) The President may by notified order provide for the establishment of a permanent bench or benches of the common High Court at one or more places within the territories to which the jurisdiction of the High Court extends, other than the principal seat of the High Court, and for any matters connected therewith: Provided that before issuing any order under this sub-section, the President shall consult the Chief Justice of the common High Court and the Governor of the State in which the bench or benches is or are proposed to be established.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), the Judges and division courts of the common High Court may also sit at such other place or places in the State of [Assam, Arunachal Pradesh, Mizoram or Nagaland] as the Chief Justice may, with the approval of the Governor of the State concerned, appoint.”

As per Mr. Nair, as the law talks of a common High Court, the contention that the Benches have a separate and exclusive

existence to exercise jurisdiction within the territories without any supervisory control of the Chief Justice, is absolutely flawed. He thus implored the Court to dismiss the writ petitions.

21. We have given our thoughtful consideration to the submissions advanced at Bar and have gone through the material placed on record and the order dated 09.03.2022, whereby the writ petitions were transferred from the Itanagar Permanent Bench to the Principal Seat at Guwahati.

22. First and foremost, we would proceed to consider the submission advanced by Mr. Pertin, learned counsel for the petitioners that one of us i.e. the Chief Justice should recuse from hearing the matter because the writ petition lays challenge to the administrative decision of the Chief Justice in transferring the contentious writ petitions from Itanagar to Guwahati.

We feel that the said submission of Mr. Pertin is flawed and fallacious. We may point out that the High Court of a State established under Article 214 of the Constitution of India is a Court of Record as per Article 215 of the Constitution of India. The High Court of a State exercises power of superintendence over all courts and Tribunals throughout the territory where it exercises jurisdiction. Appointments of officers in District Judiciary and administrative decisions pertaining to the services of officers of the District Judiciary are taken by the High Court, i.e. the Full Court comprising of the Chief Justice and all other Judges. If the contention advanced by Mr. Pertin were to be accepted, the Chief Justice would not be competent to hear any petition involving the service dispute of a Judicial Officer wherein the High Court is impleaded as a party respondent because the administrative

decision is taken by the High Court. For that matter, no Judge of the High Court would be considered competent to hear petitions arising from service matters of Judicial Officers because it is the Full Court which takes the decisions in relation to services of Judicial Officers. If the Latin maxim *nemo judex in causa sua* were to be applied, service matters of Judicial Officers may not be heard in the same High Court.

23. Our view is fortified by the observations made by Hon'ble the Supreme Court in the Constitution Bench judgment rendered in the case of ***Indore Development Authority -Vs- Manohar Lal***, reported in ***AIR 2019 Supreme 5482***. In the said case, some of the contesting parties sought recusal of one of Members constituting the Constitution Bench from hearing the matter on the ground that His Lordship had already decided the issue which was under consideration of the Full Bench in earlier judgment.

Dealing with the said submission, the Constitution Bench of the Hon'ble Supreme Court laid down extensive principles dealing with a plea for recusal which fortify our view that the prayer for recusal by the Chief Justice made by the petitioner's counsel is on the face of it misconceived and untenable. Relevant paragraphs of the above judgment are reproduced hereinbelow for the sake of ready reference:-

"27. There may not be even one Judge in this Court who has not taken a view one way or the other concerning Section 24 of the Act of 2013, either in this Court or in the High Court. If the submission is accepted, no Judge will have the power to decide such a matter on the judicial side. We have to deal with the cases every day in which similar or somewhat different questions are involved concerning the same provision. For having taken a view once, if recusal is to be made, it would be very difficult to get a Judge to hear and decide a question of law. We have to correct the decision, apply the law, independently interpret the provisions as per the fact situation of the case which may not be germane in the earlier

matter. A judgment is not a halting place, it is stepping stone. It is not like a holy book which cannot be amended or corrected. It may also work to the advantage of all concerned if a Judge having decided the matter either way is also a member of the larger bench. A Judge who had rendered any decision in a smaller combination is not disqualified from being part of a larger Bench when a reference is made to the larger bench. Rather, it is a consistent practice prevailing in various High Courts as well as of this Court to include the same Judge/Judges in larger Benches. Shri Mohan Parasaran, learned senior counsel has referred to Rule 8 of Delhi High Court Rules contained in Chapter 3; Part C which reads as under:

'8. Judge or Judges who refer a case shall ordinarily sit on the bench which considers the reference – The Judges or a Bench by whom any question or case is referred shall ordinarily be members of the Division Bench or Full Bench, as the case may be appointed to consider such question or case.'

The rule provides that a Judge who referred a case has to sit on the larger Bench to consider the reference. In the present case also, the reference has been made by me and my recusal has been sought. Thus, based on the consistent practice, we find that no ground for recusal is made out.

28. Recusal has been prayed for on the ground of legal predisposition. Where recusal is sought on the ground, various questions arise for consideration. Firstly, legal predisposition is the outcome of a judicial process of interpretation, and the entire judicial system exists for refining the same. There is absolutely nothing wrong in holding a particular view in a previous judgment for or against a view canvassed by a litigant. No litigant can choose, who should be on the Bench. He cannot say that a Judge who might have decided a case on a particular issue, which may go against his interest subsequently or is part of a larger Bench should not hear his case. Furthermore, if a party or his Counsel can at length argue on the question of recusal of the Judge before him, he can also successfully question the correctness of a judgment rendered by him. A litigant has got the right to make arguments which suit his cause before a Judge/Judges having taken a contrary view earlier. Moreover, if it is open to one litigant to seek recusal and recusal is permitted, then the right has to be given to the opposite party to seek recusal of a Judge who may have decided a case against his interest. In case it is permitted to either side, that would end judicial independence. Then parties will be choosing Benches to their liking. In that case, the Judges holding a view can be termed to be disqualified. In case the submission of recusal is accepted, the Judges having either side view, cannot hear the matter and have to recuse from hearing. In that case to find neutral Judges would be difficult to find and that would be subvert to the very concept of independent judicial system. If litigants are given the right to seek recusal of a judge on the ground that in a smaller Bench, a view has been taken by the Judge, the

correctness of which has to be decided by the larger Bench, which includes the same Judge, then on a parity of reasoning recusal might be sought on the ground of the judge having taken a view one way or the other even in a different case in which similar issues are involved if the judge has decided similar issues earlier, in the same Court or in a different Court. This would open the flood gates of forum shopping. Recusal upon an imagined apprehension of legal predisposition would, in reality amount to acceding to the request that a Judge having a particular view and leanings in favour of the view which suits a particular litigant, should man the Bench. It would not only be allowing Bench hunting but would also be against the judicial discipline and will erode the confidence of the common man for which the judicial system survives.

29. The question that comes to the mind is whether one of us should recuse in order to prevent the embarrassment caused to a Judge by a member of the Bar, by seeking his recusal. Recusal would be the easiest way to solve it. On the other hand, a larger question arises. If request for recusal on the ground of legal predisposition in the form of a judgment is acceded to, that would destroy the very edifice of an independent judicial system.

30. The entire judicial system is based on sound constitutional principles. The roster making power is bestowed on the Chief Justice of India so that litigants are not able to choose the Judges before whom they have to argue a matter, and he is a constitutional functionary who has been enjoined with this task at the highest pedestal to exercise the power of roster making. He is the repository of faith. Once he has exercised his power, it is not for the Judges to choose. As per their oath, they have to discharge their duties without fear and favour and in a dispassionate manner without any ill will, bias towards litigants, or a cause. The question which arises is whether merely delivering a judgment of which correctness is to be examined, would disqualifying a Judge from being part of the larger Bench. The answer to the question has to be in the negative as there is a consistent practice of this Court which has evolved that the Judges who have rendered a decision earlier in smaller combination, have also formed part of the larger Bench, and there are umpteen occasions as mentioned above when Judges have overruled their own view. In *LITEKY* (supra), the United States Supreme Court has held that rather it may be advantageous to have them on a Bench hearing the matter as judgments are rendered after hearing the arguments of learned counsel for the parties. There is always a scope to further develop the law and to correct the errors, and this can better be done by having Judges on the Bench, who have earlier rendered judgments with respect to the subject matter to which of the parties the view taken suits is not relevant.

31. If requests for recusal are acceded to for the asking, litigants will be unscrupulously taking over the roster making powers of the Chief Justice and that would tantamount to interference with the judicial system, by the mighty to have a particular Bench by

employing several means and putting all kinds of pressures from all angles all around. It is the test of the ability of the judicial system to withstand such onslaught made from every nook and corner. Any recusal in the circumstances is ruled out, such prayer strengthens the stern determination not to succumb to any such pressure and not to recuse on the ground on which recusal sought because for any reason, such a prayer is permitted, even once, it would tantamount to cowardice and give room to big and mighty to destroy the very judicial system. Moreover, recusal in such unjustified circumstances, would become the norm.

32. *It was vehemently urged by learned senior counsel on behalf of the respondents that they may feel embarrassed in arguing a proposition of law which has been dealt with in the Indore Development Authority elaborately. We find that given that arguments on recusal, spilling for over a day, could be made vociferously, in a belligerent fashion and with utmost ability, the submission that the learned counsel would feel diffident in arguing a proposition of law on merits, is difficult to accept. We feel that there is no dearth of talent in this Court to argue a matter most effectively even against the tide. The lawyers have compelled this Court time and again to change its views and to refine the law. This Court is known for not a particular view but for refining the law and that has been done with the help, ability and legal ingenuity of the lawyers to convince this Court with aplomb to correct its view. That is how the process goes on as the entire system exists for the people of this country. Under the guise of that, a reasonable man should not have even an iota of doubt as to the impartiality of the Tribunal. If recusal is made, it would tantamount to giving room to unscrupulous litigant to have a Judge of their choice who can share the views which are to be canvassed by them. No such right can be given to any person under the aforesaid guise; there is no cause for any apprehension. There is no room to entertain the same. The plea cannot be termed anything other than Bench hunting, if it is said that until and unless the one which suits a litigant is found the matters are not to be argued.*

33. *It also passes comprehension whether in a Constitution Bench, consisting of five Judges, prayer for recusal of a Judge who has taken a particular view earlier, is justified? The Bench consists of five Judges. Each Judge may have his own view. They would not succumb to a view held by one of the judges. They may also have their own view in the matter. Are they also to be disqualified? In case the petitioner's prayer is to be allowed, then they may want a Bench of 5:0 in their favour or 4 in favour and 1 against or 3 in favour and 2 against. That is not how the system can survive. The very idea of seeking recusal is inconceivable and wholly unjustified, and the prayer cannot be acceded to.*

34. *The decision in Supreme Court Advocates on Record Association & Anr. v. Union of India (recusal matter), (2016) 5 SCC 808, has been referred to. Recusal of Justice Khehar (as His Lordship then was) was sought from the Constitution Bench. The*

principles have been summarised by this Court. The first principle which this Court has discussed is the impartiality of a Judge. It has been observed by Justice Chelameswar that the first principle is that the Judge should be impartial. Merely having a legal opinion has no connection with impartiality. It may be within the purview of the legal correctness of the opinion. The second test is Latin maxim *nemo iudex in re sua* i.e., no man shall be a Judge in his own cause. A judgment rendered by a Judge is not in his own cause. Grant Hammond, a former Judge of the Court of Appeal of New Zealand has in his book 'Judicial Recusal', which has been referred to, observed that English Common Law on recusal was both simple and highly constrained; a Judge could only be disqualified for a direct pecuniary interest or consanguinity, affinity, friendship or enmity with a party or because he was or had been a party's advocate. The Court has discussed the matter thus:

'12. Grant Hammond, a former Judge of the Court of Appeal of New Zealand and an academician, in his book titled *Judicial Recusal* traced out principles on the law of recusal as developed in England in the following words:

'The central feature of the early English common law on recusal was both simple and highly constrained: a Judge could only be disqualified for a direct pecuniary interest. What would today be termed 'bias', which is easily the most controversial ground for disqualification, was entirely rejected as a ground for recusal of Judges, although it was not completely dismissed in relation to jurors.

This was in marked contrast to the relatively sophisticated canon law, which provided for recusal if a Judge was suspected of partiality because of consanguinity, affinity, friendship or enmity with a party, or because of his subordinate status towards a party or because he was or had been a party's advocate.'

* * * * *

25. From the above decisions, in our opinion, the following principles emerge:

25.1. If a Judge has a financial interest in the outcome of a case, he is automatically disqualified from hearing the case.

25.2. In cases where the interest of the Judge in the case is other than financial, then the disqualification is not automatic but an enquiry is required whether the existence of such an interest disqualifies the Judge tested in the light of either on the principle of "real danger" or "reasonable apprehension" of bias.

25.3. The Pinochet case added a new category i.e. that the Judge is automatically disqualified from hearing a case where the Judge is interested in a cause which is being promoted by one of the parties to the case.

26. It is nobody's case that, in the case at hand, Justice Khehar had any pecuniary interest or any other interest falling under the second of the abovementioned categories. By the very nature of the case, no such interest can arise at all.

27. The question is whether the principle of law laid down in Pinochet case is attracted. In other words, whether Justice Khehar can be said to be sharing any interest which one of the parties is promoting. All the parties to these proceedings claim to be promoting the cause of ensuring the existence of an impartial and independent judiciary. The only difference of opinion between the parties is regarding the process by which such a result is to be achieved. Therefore, it cannot be said that Justice Khehar shares any interest which any one of the parties to the proceeding is seeking to promote.

28. The implication of Shri Nariman's submission is that Justice Khehar would be predetermined to hold the impugned legislation to be invalid. We fail to understand the stand of the petitioners. If such apprehension of the petitioners comes true, the beneficiaries would be the petitioners only. The grievance,

29. The learned Attorney General appearing for the Union of India made an emphatic statement that the Union of India has no objection for Justice Khehar hearing the matter as a Presiding Judge of the Bench.

30. No precedent has been brought to our notice, where courts ruled at the instance of the beneficiary of bias on the part of the adjudicator, that a judgment or an administrative decision is either voidable or void on the ground of bias. On the other hand, it is a well-established principle of law that an objection based on bias of the adjudicator can be waived. Courts generally did not entertain such objection raised belatedly by the aggrieved party:

'The right to object to a disqualified adjudicator may be waived, and this may be so even where the disqualification is statutory. The court normally insists that the objection shall be taken as soon as the party prejudiced knows the facts which entitle him to object. If, after he or his advisors know of the disqualification, they let the proceedings continue without protest, they are held to have waived their objection and the determination cannot be challenged.'

In our opinion, the implication of the above principle is that only a party who has suffered or is likely to suffer an adverse adjudication because of the possibility of bias on the part of the adjudicator can raise the objection.

31. The significant power as described by Shri Nariman does not inhere only to the members of the Collegium, but inheres in every Judge of this Court who might be called upon to express his opinion regarding the proposals of various appointments of the High Court Judges, Chief Justices or Judges of this Court, while the members

of the Collegium are required to exercise such “significant power” with respect to each and every appointment of the abovementioned categories, the other Judges of this Court are required to exercise such “significant power”, at least with respect to the appointments to or from the High Court with which they were earlier associated with either as Judges or Chief Justices. The argument of Shri Nariman, if accepted would render all the Judges of this Court disqualified from hearing the present controversy. A result not legally permitted by the “doctrine of necessity”.

Justice J.S. Khehar, in his opinion, has observed thus:

“57. The reason that was pointed out against me, for seeking my recusal was, that I was a part of the 1 + 4 Collegium. But that should have been a disqualification for Anil R. Dave, J. as well. When he commenced hearing of the matters, and till 742015, he suffered the same alleged disqualification. Yet, the objection raised against me, was not raised against him. When confronted, Mr Fali S. Nariman vociferously contested, that he had not sought the recusal of Anil R. Dave, J. He supported his assertion with proof. One wonders, why did he not seek the recusal of Anil R. Dave, J.? There is no doubt about the fact, that I have been a member of the 1 + 4 Collegium, and it is likely that I would also shortly become a Member of NJAC, if the present challenge raised by the petitioners was not to succeed. I would therefore remain a part of the selection procedure, irrespective of the process which prevails. That however is the position with reference to four of us (on the instant five Judge Bench). Besides me, my colleagues on the Bench — J. Chelameswar, Madan B. Lokur and Kurian Joseph, JJ. would in due course be a part of the Collegium (if the writ petitioners before this Court were to succeed), or alternatively, would be a part of NJAC (if the writ petitioners were to fail). In such eventuality, the averment of conflict of interest, ought to have been raised not only against me, but also against my three colleagues. But, that was not the manner in which the issue has been canvassed. In my considered view, the prayer for my recusal is not well founded. If I were to accede to the prayer for my recusal, I would be initiating a wrong practice, and laying down a wrong precedent. A Judge may recuse at his own, from a case entrusted to him by the Chief Justice. That would be a matter of his own choosing. But recusal at the asking of a litigating party, unless justified, must never to be acceded to. For that would give the impression, of the Judge had been scared out of the case, just by the force of the objection. A Judge before he assumes his office, takes an oath to discharge his duties without fear or favour. He would breach his oath of office, if he accepts a prayer for recusal, unless justified. It is my duty to discharge my responsibility with absolute earnestness and sincerity. It is my duty to abide by my oath of office to uphold the Constitution and the laws. My decision to continue to be a part of the Bench, flows from the oath which I took, at the time of my elevation to this Court.

(emphasis supplied)

Justice Lokur, in his opinion, has observed:

“60. In my respectful opinion, when an application is made for the recusal of a Judge from hearing a case, the application is made to the Judge concerned and not to the Bench as a whole. Therefore, my learned brother Justice Khehar is absolutely correct in stating that the decision is entirely his, and I respect his decision.

65. The issue of recusal from hearing a case is not as simple as it appears. The questions thrown up are quite significant and since it appears that such applications are gaining frequency, it is time that some procedural and substantive rules are framed in this regard. If appropriate rules are framed, then, in a given case, it would avoid embarrassment to other Judges on the Bench.”

It has been held that decision to recuse is that of the Judge concerned, and unjustified pressure should never be allowed.

35. Shri Tushar Mehta, learned Solicitor General, has relied upon the decision in Subrata Roy Sahara v. Union of India & Ors., (2014) 8 SCC 470. Recusal of the Bench was sought by way of filing a petition. The embarrassment which is caused by such a prayer, concept of correction of a mistake, if any, recognition of mistake and its rectification have also been considered. This Court has observed:

‘7. Now the embarrassment part. Having gone through the pleadings of the writ petition we were satisfied that nothing expressed therein could be assumed as would humiliate or discomfort us by putting us to shame. To modify an earlier order passed by us for a mistake we may have committed, which is apparent on the face of the record, is a jurisdiction we regularly exercise under Article 137 of the Constitution of India. Added to that, it is open to a party to file a curative petition as held by this Court in Rupa Ashok Hurra v. Ashok Hurra, (2002) 4 SCC 388.’

These jurisdictions are regularly exercised by us, when made out, without any embarrassment. Correction of a wrong order would never put anyone to shame. Recognition of a mistake, and its rectification, would certainly not put us to shame. In our considered view, embarrassment would arise when the order assailed is actuated by personal and/or extraneous considerations, and the pleadings record such an accusation. No such allegation was made in the present writ petition. And therefore, we were fully satisfied that the feeling entertained by the petitioner, that we would not pass an appropriate order, if the order impugned dated 432014 was found to be partly or fully unjustified, was totally misplaced.”

36. In Subrata Roy Sahara (supra) this Court has also referred to the decision of Mr. R.K. Anand’s case (supra) in which it has been observed that the path of recusal is very often a convenient and a soft option as a Judge has no vested interest in doing a particular matter. It is the Constitution of India which enjoins a Judge to duly

and faithfully and to the best of his ability, knowledge, and judgment, perform the duties of his office without fear or favour. Affronts, jibes, and consciously planned snubs should not deter us from discharging our onerous responsibility. This Court has observed:

‘10. We have recorded the above narration, lest we are accused of not correctly depicting the submissions as they were canvassed before us. In our understanding, the oath of our office required us to go ahead with the hearing. And not to be overawed by such submissions. In our view, not hearing the matter, would constitute an act in breach of our oath of office, which mandates us to perform the duties of our office, to the best of our ability, without fear or favour, affection or ill will.

11. This is certainly not the first time when solicitation for recusal has been sought by the learned counsel. Such a recorded peremptory prayer was made by Mr R.K. Anand, an eminent Senior Advocate, before the High Court of Delhi seeking the recusal of Mr Justice Manmohan Sarin from hearing his personal case. Mr Justice Manmohan Sarin while declining the request made by Mr R.K. Anand, observed as under:

‘The path of recusal is very often a convenient and a soft option. This is especially so since a Judge really has no vested interest in doing a particular matter. However, the oath of office taken under Article 219 of the Constitution of India enjoins the Judge to duly and faithfully and to the best of his knowledge and judgment, perform the duties of office without fear or favour, affection or ill will while upholding the Constitution and the laws. In a case, where unfounded and motivated allegations of bias are sought to be made with a view of forum hunting/Bench preference or browbeating the Court, then, succumbing to such a pressure would tantamount to not fulfilling the oath of office.’

The above determination of the High Court of Delhi was assailed before this Court in R.K. Anand v. Delhi High Court, (2009) 8 SCC 106. The determination of the High Court whereby Mr Justice Manmohan Sarin declined to withdraw from the hearing of the case came to be upheld, with the following observations: (SCC p. 192, para 263)

“263. The above passage, in our view, correctly sums up what should be the court’s response in the face of a request for recusal made with the intent to intimidate the court or to get better of an ‘inconvenient’ Judge or to obfuscate the issues or to cause obstruction and delay the proceedings or in any other way frustrate or obstruct the course of justice.”

(emphasis supplied)

In fact, the observations of the High Court of Delhi and those of this Court reflected exactly how it felt, when the learned counsel addressed the Court at the commencement of the hearing. If it was the learned counsel's posturing antics, aimed at benchhunting or benchhopping (or should we say, benchavoiding), we would not allow that. Affronts, jibes and carefully and consciously planned snubs could not deter us from discharging our onerous responsibility. We could at any time during the course of hearing walk out and make way for another Bench to decide the matter, if ever we felt that that would be the righteous course to follow. Whether or not it would be better for another Bench to hear this case will emerge from the conclusions, we will draw, in the course of the present determination.

131. We shall now deal with the substance, and the import, of the judgments relied upon. It is not the case of the petitioner that we have any connection with either the two Companies under reference, or any other company/firm which constitutes the Sahara Group. We may state, that neither of us has even a single share with the two Companies concerned or with any other company/firm comprising of the Sahara Group. In order to remove all ambiguity in the matter we would further state, that neither of us, nor any of our dependent family members, own even a single share in any company whatsoever. Neither of us has been assisted in this case, for its determination on merits by any law clerk, intern or staff member, while hearing, dealing with or deciding the controversy. Nor has any assertion in this behalf been made against us by the petitioner or his learned counsel. Accordingly, the factual position, which was the basis of the decisions relied upon by the learned counsel, is not available in the facts and circumstances of this case. In the above view of the matter, it is but natural to conclude, that none of the judgments relied upon by the learned Senior Counsel for the petitioner, on the subject of bias, are applicable to the facts and circumstances of this case. We are satisfied that none of the disguised aspersions cast by the learned Senior Counsel, would be sufficient to justify the invocation of the maxim, that justice must not actually be done, but must also appear to be done. As already noticed above, even though our combination as a Bench, did not exist at the time, when the present petition was filed, a Special Bench, with the present composition, was constituted by the Hon'ble the Chief Justice, as a matter of his conscious determination. No litigant can be permitted to dissuade us in discharging the onerous responsibility assigned to us by the Hon'ble the Chief Justice.

135. Dr. Rajeev Dhavan, learned Senior Counsel also accused us of having a predisposition in respect of the controversy. This predisposition, according to him, appeared to be on the basis of a strong commitment towards the "other

side". This assertion was repeated several times during the hearing. But, which is the other side? In terms of our order dated 3182012 the only gainer on the other side is the Government of India. The eighth direction of our order dated 3182012, reads as under: (SCC p. 172, para 326)

'326.8. SEBI (WTM) if, after the verification of the details furnished, is unable to find out the whereabouts of all or any of the subscribers, then the amount collected from such subscribers will be appropriated to the Government of India'

(emphasis supplied)

If the "other side", is the Government of India, there is certainly no substance in the aspersion cast by the learned counsel. Just the above aspect of the matter is sufficient to burst the bubble of all the carefully crafted insinuations, systematically offloaded, by the learned counsel for effect and impact.

137. The observations recorded in the above judgment in Jaswant Singh v. Virender Singh, 1995 Supp (1) SCC 384, are fully applicable to the mannerism and demeanour of the petitioner Mr Subrata Roy Sahara and some of the learned Senior Counsel. We would have declined to recuse from the matter, even if the "other side", had been a private party. For, our oath of office requires us to discharge our obligations, without fear or favour. We therefore also commend to all courts, to similarly repulse all baseless and unfounded insinuations, unless of course, they should not be hearing a particular matter, for reasons of their direct or indirect involvement. The benchmark, that justice must not only be done but should also appear to be done, has to be preserved at all costs."

37. In R.K. Anand v. Registrar, Delhi High Court, (2009) 8 SCC 106, it was observed:

264. We are constrained to pause here for a moment and to express grave concern over the fact that lately such tendencies and practices are on the increase. We have come across instances where one would simply throw a stone on a Judge (who is quite defenceless in such matters!) and later on cite the gratuitous attack as a ground to ask the Judge to recuse himself from hearing a case in which he would be appearing. Such conduct is bound to cause deep hurt to the Judge concerned but what is of far greater importance is that it defies the very fundamentals of administration of justice. A motivated application for recusal, therefore, needs to be dealt with sternly and should be viewed ordinarily as interference in the due course of justice leading to penal consequences."

38. In Kamini Jaiswal v. Union of India & Anr., (2018) 1 SCC 156, this Court has dealt with the matter of recusal thus:

*“24. There is no conflict of interest in such a matter. In case a Judge is hearing a matter and if he comes to know that any party is unscrupulously trying to influence the decisionmaking or indulging in malpractices, it is incumbent upon the Judge to take cognizance of such a matter under the Contempt of Courts Act and to deal with and punish such person in accordance with law as that is not the conflict of interest but the purpose for which the entire system exists. Such things cannot be ignored and recusal of a Judge cannot be asked on the ground of conflict of interest, it would be the saddest day for the judicial system of this country to ignore such aspects on the unfounded allegations and materials. It was highly improper for the petitioner to allege conflict of interest in the petition filed that the Hon’ble Chief Justice of India should not hear on judicial side or allocate the matter on the administrative side. It appears that in order to achieve this end the particular request has been made by filing successive petitions day after the other and prayer was made to avoid the Hon’ble Chief Justice of India to exercise the power for allocation of cases which was clearly an attempt at forum hunting and has to be deprecated in the strongest possible words. Making such scandalous remarks also tantamount to interfering with administration of justice, an advocate cannot escape the responsibility on the ground that he drafted the same in his/her personal capacity as laid down in *Shamsher Singh Bedi v. High Court of Punjab & Haryana*, (1996) 7 SCC 99. In *Charan Lal Sahu v. Union of India*, (1988) 3 SCC 255, this Court has observed that in a petition filed under Article 32 in the form of PIL attempt of mudslinging against the advocates, Supreme Court and also against the other constitutional institutions indulged in by an advocate in a careless manner, meaningless and as contradictory pleadings, clumsy allegations, contempt was ordered to be drawn. The Registry was directed not to entertain any PIL petition of the petitioner in future.*

*27. This Court considered various categories of forum shopping in *Union of India v. Cipla Ltd.*, (2009) 8 SCC 106. Even making allegations of a per se conflict of interest require the matter could be transferred to another Bench, has also been held to be another form of forum hunting. This Court has considered various decisions thus: (SCC pp. 31820, paras 146155)*

“146. The learned Solicitor General submitted that Cipla was guilty of forum shopping inasmuch as it had filed petitions in the Bombay High Court, the Karnataka High Court and also an affidavit in the Delhi High Court as a member of the Bulk Drug Manufacturers Association and had eventually approached the Allahabad High Court for relief resulting in the impugned judgment and order dated 332004. It was submitted that since Cipla had approached several

constitutional courts for relief, the proceedings initiated in the Allahabad High Court clearly amount to forum shopping.

147. We are not at all in agreement with the learned Solicitor General. Forum shopping takes several hues and shades and Cipla's petitions do not fall under any category of forum shopping.

148. A classic example of forum shopping is when a litigant approaches one Court for relief but does not get the desired relief and then approaches another Court for the same relief. This occurred in *Rajiv Bhatia v. State (NCT of Delhi)*, (1999) 8 SCC 525. The respondent mother of a young child had filed a petition for a writ of habeas corpus in the Rajasthan High Court and apparently did not get the required relief from that Court. She then filed a petition in the Delhi High Court also for a writ of habeas corpus and obtained the necessary relief. Notwithstanding this, this Court did not interfere with the order passed by the Delhi High Court for the reason that this Court ascertained the views of the child and found that she did not want to even talk to her adoptive parents and therefore the custody of the child granted by the Delhi High Court to the respondent mother was not interfered with. The decision of this Court is on its own facts, even though it is a classic case of forum shopping.

149. In *Arathi Bandi v. Bandi Jagadrakshaka Rao*, (2013) 15 SCC 790, this Court noted that jurisdiction in a court is not attracted by the operation or creation of fortuitous circumstances. In that case, circumstances were created by one of the parties to the dispute to confer jurisdiction on a particular High Court. This was frowned upon by this Court by observing that to allow the assumption of jurisdiction in created circumstances would only result in encouraging forum shopping.

150. Another case of creating circumstances for the purposes of forum shopping was *World Tanker Carrier Corpn. v. SNP Shipping Services (P) Ltd.*, (1998) 5 SCC 310, wherein it was observed that the respondent plaintiff had made a deliberate attempt to bring the cause of action, namely, a collision between two vessels on the high seas within the jurisdiction of the Bombay High Court. Bringing one of the vessels to Bombay in order to confer jurisdiction on the Bombay High Court had the character of forum shopping rather than anything else.

151. Another form of forum shopping is taking advantage of a view held by a particular High Court in contrast to a different view held by another High Court. In *Ambica Industries v. CCE*, (2007) 6 SCC 769, the assessee was from Lucknow. It challenged an order passed by the Customs, Excise and Service Tax Appellate Tribunal ("CESTAT") located in Delhi before the Delhi High Court. CESTAT had jurisdiction over the State of Uttar Pradesh, NCT of Delhi and the State of Maharashtra. The Delhi High Court did not entertain the proceedings initiated by the assessee for want of territorial jurisdiction. Dismissing the assessee's appeal this Court gave the example of an assessee affected by an assessment order

in Bombay invoking the jurisdiction of the Delhi High Court to take advantage of the law laid down by the Delhi High Court or an assessee affected by an order of assessment made at Bombay invoking the jurisdiction of the Allahabad High Court to take advantage of the law laid down by it and consequently evade the law laid down by the Bombay High Court. It was said that this could not be allowed and circumstances such as this would lead to some sort of judicial anarchy.

152. Yet another form of forum shopping was noticed in *Jagmohan Bahl v. State (NCT of Delhi)*, (2014) 16 SCC 501, wherein it was held that successive bail applications filed by a litigant ought to be heard by the same learned Judge, otherwise an unscrupulous litigant would go on filing bail applications before different Judges until a favourable order is obtained. Unless this practice was nipped in the bud, it would encourage unscrupulous litigants and encourage them to entertain the idea that they can indulge in forum shopping, which has no sanction in law and certainly no sanctity.

153. Another category of forum shopping is approaching different courts for the same relief by making a minor change in the prayer clause of the petition. In *Udyami Evam Khadi Gramodyog Welfare Sanstha v. State of U.P.*, (2008) 1 SCC 560, it was noticed by this Court that four writ applications were filed by a litigant and although the prayers were apparently different, the core issue in each petition centred round the recovery of the amount advanced by the bank. Similarly, substituting some petitioners for others with a view to confer jurisdiction on a particular court would also amount to forum shopping by that group of petitioners.

154. Finally and more recently, in *Supreme Court Advocates on Record Assn. v. Union of India (Recusal Matter)*, (2016) 5 SCC 808, Khehar, J. noticed yet another form of forum shopping where a litigant makes allegations of a perceived conflict of interest against a Judge requiring the Judge to recuse from the proceedings so that the matter could be transferred to another Judge.

155. The decisions referred to clearly lay down the principle that the Court is required to adopt a functional test visàvis the litigation and the litigant. What has to be seen is whether there is any functional similarity in the proceedings between one court and another or whether there is some sort of subterfuge on the part of a litigant. It is this functional test that will determine whether a litigant is indulging in forum shopping or not.”

39. In *Bal Kishan Giri v. State of Uttar Pradesh*, (2014) 7 SCC 280, this Court has considered derogatory remarks and efforts to destroy the system. The relevant portions are extracted hereunder:

“12. This Court in *M.B. Sanghi v. High Court of Punjab and Haryana*, (1991) 3 SCC 600, while examining a similar case observed: (SCC p. 602, para 2)

“2. ... The foundation of [judicial] system which is based on the independence and impartiality of those who man it will be shaken if disparaging and derogatory remarks are made against the presiding judicial officers with impunity. It is high time that we realise that the much cherished judicial independence has to be protected not only from the executive or the legislature but also from those who are an integral part of the system. An independent judiciary is of vital importance to any free society.”

13. In *Asharam M. Jain v. A.T. Gupta*, (1983) 4 SCC 125, while dealing with the issue, this Court observed as under: (SCC p. 127, para 3)

“3. ... The strains and mortification of litigation cannot be allowed to lead litigants to tarnish, terrorise and destroy the system of administration of justice by vilification of Judges. It is not that Judges need be protected; Judges may well take care of themselves. It is the right and interest of the public in the due administration of justice that has to be protected.”

14. In *Jennison v. Baker*, (1972) 2 QB 52, All ER p. 1006d, it was observed: (QB p. 66 H)

“... ‘The law should not be seen to sit by limply, while those who defy it go free, and those who seek its protection lose hope.’”

40. The decision in *All India Institute of Medical Sciences v. Prof. Kaushal K. Verma*, (2015) 220 DLT 446 (W.P. [C] No.4103/2014), rendered by one of us, Ravindra Bhat, J., has also been referred, thus:

“25. Before ending this unusually prolix order, which can run into the danger of selfvindication, the Court observes that requests for recusal are to be based on reasonable apprehensions; they cannot be speculative or fanciful suppositions. An observation that needs to be emphasized is that recusals generally, and especially those fuelled by unjustified demands can be burdensome on the judges who are eventually called upon to decide the cause. Whenever made, the concerned court or judge so charged is bound to take it seriously, as it undermines what is the bedrock of justice deliveryimpartiality. To borrow the words of Beverly McLachlin (Chief Justice of Canada) (“Judging in a Democratic State”) :

“...judges are not living Oracles. They are human beings, trained in the law, who struggle to understand the situations before them and to resolve them in accordance with the law and their consciences. And judges must learn to live with being wrong. As human beings, judges learn early in their career to deal with criticism. Every new judge dons the judicial robes resolved never to make a mistake. And

every new judge fails. Decisions must sometimes be made without the opportunity for full reflection. The law may not be entirely clear. The truth may be elusive. In the result, even the best judges inevitably are found to have erred. The errors are publicly identified by appellate judges and laid plain for all to see. The fact that appellate judges themselves have been known to err may provide only limited consolation."

If one may add, the greater the experience of the judge, the more acutely she or he is aware of her or his fallibility and the pitfalls of acting on impulse or prejudice. The journey, which begins with certainty, later leads to a path of many grey areas. Given that language itself is an imperfect medium, words are but vessels giving shape to ideas and that no human being is perfect, no judge can claim to be perfect in communicating ideas. The emphasis on a phrase here or an expression there, bereft of anything more, would not ipso facto disclose a predilection, or predisposition to decide in a particular manner."

There is a concurring opinion thus:

"1. I have seen the draft of the order, prepared by my brother S. Ravindra Bhat, J., on the request of recusal by the Division Bench headed by him. I fully concur with the conclusions reached by him and the reasoning leading thereto. I would only add that the request for recusal by the Bench ignores the fact that it comprises of two Judges each of whom have an independent mind to apply. The presence of another Judge with equal say strengthens the rigor of the judicial scrutiny and cannot be undermined."

41. Mr. Shyam Diwan, learned senior counsel has referred to the foreign Rules stating "what is at stake is the confidence which the courts in a democratic society must inspire in the public. Accordingly, any judge in respect of whom there is a legitimate reason to fear a lack of impartiality must withdraw". In support of his submission, he has referred to Section 47 of Title 28, Judiciary and Judicial Procedure, 1948 of United States of America; and Rule 24(5)(b) of Rules of Court of the European Union, stating that there is a statutory bar on any judge presiding over cases where judgments delivered by him are to be adjudicated upon in appeal.

42. The decisions and rules relating to the appeal against Chamber Judge are not at all relevant. There is no appeal within the Supreme Court. It has a totally different structure, and has its own corrective mechanism, need not be gainsaid. There is no room for reasonable apprehension to be entertained by the clientele of the respondent's counsel. There is no question of recusal on predisposition as to the legal issue or as to the relief to be granted, such an apprehension also is baseless. The ultimate test is that it is for the Judge to decide and to find out whether he will be able to deliver impartial justice to a cause with integrity with whatever intellectual capacity at his command and he is not prejudiced by any fact or law and is able to take an independent view. The

answer would lie in examining whether without having any bias or without any pressure or not even irked by such a prayer for recusal, can he decide the case impartially. In case the answer is that he will be able to deliver justice to the cause, he cannot and must not recuse from any case as the duty assigned by the Constitution has to be performed as per the oath and there lies the larger public interest. He cannot shake the faith that the common man reposes in the judiciary as it is the last hope for them.

43. Having surveyed the precedents cited at the Bar, and having considered the arguments, it is my considered view that a judge rendering a judgment on a question of law would not be a bar to her or his participation if in a larger Bench if that view is referred for reconsideration. The previous judgment cannot constitute bias, or a predisposition nor can it seem to be such, so as to raise a reasonable apprehension of bias. Nor can expressions through a judgment (based on the outcome of arguments in an adversarial process) be a “subject matter” bias on the merits of a norm or legal principle, or provisions. The previous decisions and practice of this court have clearly shown that there can be and is no bar as the respondents’ senior counsel argue. Accepting the plea of recusal would sound a death knell to the independent system of justice delivery where litigants would dictate participation of judges of their liking in particular cases or causes.

44. Recusal is not to be forced by any litigant to choose a Bench. It is for the Judge to decide to recuse. The embarrassment of hearing the lengthy arguments for recusal should not be a compelling reason to recuse. The law laid down in various decisions has compelled me not to recuse from the case and to perform the duty irrespective of the consequences, as nothing should come in the way of dispensation of justice or discharge of duty as a Judge and judicial decisionmaking. There is no room for prejudice or bias. Justice has to be pure, untainted, uninfluenced by any factor, and even decision for recusal cannot be influenced by outside forces. However, if I recuse, it will be a dereliction of duty, injustice to the system, and to other Judges who are or to adorn the Benches in the future. I have taken an informed decision after considering the nittygritty of the points at issue, and very importantly, my conscience. In my opinion, I would be committing a grave blunder by recusal in the circumstances, on the grounds prayed for, and posterity will not forgive me down the line for setting a bad precedent. It is only for the interest of the judiciary (which is supreme) and the system (which is nulli secundus) that has compelled me not to recuse.

ORDER

1. We have gone through the draft opinion circulated by Arun Mishra J. An application for recusal is dealt with- and has been dealt with, in this case, by the concerned member of the Bench whose participation is sought to be objected to.

2. The approach to be adopted by other members of the Bench to this sensitive issue- in such cases, is best summarized in the view of Justice Madan B. Lokur Supreme Court Advocates-on-Record-Association and Ors. vs. Union of India 2016 (5) 808 where it was stated as follows:

“In my respectful opinion, when an application is made for the recusal of a judge from hearing a case, the application is made to the concerned judge and not to the Bench as a whole. Therefore, my learned brother Justice Khehar is absolutely correct in stating that the decision is entirely his, and I respect his decision.

539. In a detailed order pronounced in Court on its own motion *v. State and Ors.* reference was made to a decision of the Supreme Court of the United States in *Jewell Ridge Coal Corporation v. Local No. 6167, United Mine Workers of America* 325 US 897 (1945), wherein it was held that a complaint as to the qualification of a justice of the Supreme Court to take part in the decision of a cause cannot properly be addressed to the Court as a whole and it is the responsibility of each justice to determine for himself the propriety of withdrawing from a case.

540. This view was adverted to by Justice Rehnquist in *Hanrahan v. Hampton* 446 US 1301 (1980) in the following words:

‘Plaintiffs-Respondents and their counsel in these cases have moved that I be recused from the proceedings in this case for the reasons stated in their 14- page motion and their five appendices filed with the Clerk of this Court on April 3, 1980. The motion is opposed by the state-Defendant Petitioners in the action. Since generally the Court as an institution leaves such motions, even though they be addressed to it, to the decision of the individual Justices to whom they refer, see Jewell Ridge Coal Corporation v. Mine Workers 325 U.S. 897 (1945) (denial of petition for rehearing) (Jackson, J., concurring), I shall treat the motion as addressed to me individually. I have considered the motion, the Appendices, the response of the state Defendants, 28 U.S.C. 455 (1976 ed. And Supp. II), and the current American Bar Association Code of Judicial Conduct, and the motion is accordingly denied.’

541. The issue of recusal may be looked at slightly differently apart from the legal nuance. What would happen if, in a Bench of five judges, an application is moved for the recusal of Judge A and after hearing the application Judge A decides to recuse from the case but the other four judges disagree and express the opinion that there is no justifiable reason for Judge A to recuse from the hearing? Can Judge A be compelled to hear the case even though he/she is desirous of recusing from the hearing? It is to get over such a difficult situation that the application for recusal is actually to an individual judge and not the Bench as a whole

542. As far as the view expressed by Justice Kurian Joseph that reasons should be given while deciding an application for recusal, I would prefer not to join that decision. In the first place, giving or not giving reasons was not an issue before us. That reasons are presently being given is a different matter altogether. Secondly, the giving of reasons is fraught with some difficulties. For example, it is possible that in a given case, a learned judge of the High Court accepts an application for his/her recusal from a case and one of the parties challenges that order in this Court. Upon hearing the parties, this Court comes to the conclusion that the reasons given by the learned judge were frivolous and therefore the order is incorrect and is then set aside. In such an event, can this Court pass a consequential order requiring the learned judge to hear the case even though he/she genuinely believes that he/she should not hear the case.”

3. In view of the above, we are of the opinion that the view of Mishra, J, to reject the application for recusal, is not a matter that can be commented upon by us.

4. With respect to the observations by Mishra, J in his opinion, regarding the legal principles applicable, we are of the considered view that there is no legal impediment or bar to his participation to hearing the reference on the merits in the present Bench.

5. We notice that his order has cited several previous instances where judges who rendered decisions in smaller bench compositions, also participated in larger bench formations when the reasoning (in such previous decisions) was doubted, and the issue referred to larger benches, for authoritative pronouncement.

6. For those and other reasons mentioned in the order of Mishra, J, we concur with his reasoning and conclusions that no legal principle or norm bars his participation in the present Bench which is to hear the reference; the precedents cited and the practice of the court, point to the contrary, i.e. that the judge who decided a previous cause, finally, can – and very often has- participated in the later, larger bench to which such previous decision is referred for reconsideration.

7. For the above reasons, and having regard to the reasons contained in Mishra, J’s order, outlining the rejection of the request for his recusal, we are of the considered opinion that this Bench should proceed to hear and decide the reference made to it, on its merits.”

24. In the case of **Om Prakash Srivastava -Vs- Union of India**, reported in **(2006) 6 SCC 207**, Hon’ble the Supreme Court has observed as follows:

“8. Two clauses of Article 226 of the Constitution on plain reading give clear indication that the High Court can exercise

power to issue direction, order or writs for the enforcement of any of the fundamental rights conferred by Part III of the Constitution or for any other purpose if the cause of action wholly or in part had arisen within the territories in relation to which it exercises jurisdiction notwithstanding that the seat of the Government or authority or the residence of the person against whom the direction, order or writ is issued is not within the said territories.[See ONGC v. Utpal Kumar Basu, (1994) 4 SCC 711]”

In the case of **State of Goa -Vs- Summit Online Trade Solutions Private Limited & Ors.**, reported in **(2023) 7 SCC 791**, Hon'ble the Supreme Court has observed as follows:

“15. This is a case where clause (2) of Article 226 has been invoked by the High Court to clothe it with the jurisdiction to entertain and try the writ petitions. The Constitutional mandate of clause (2) is that the “cause of action”, referred to therein, must at least arise in part within the territories in relation to which the high court exercises jurisdiction when writ powers conferred by clause (1) are proposed to be exercised, notwithstanding that the seat of the Government or authority or the residence of the person is not within those territories.

16. The expression “cause of action’ has not been defined in the Constitution. However, the classic definition of “cause of action” given by Lord Brett in *Cooke vs. Gill*, [(1873) 8 CP 107] that “cause of action means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court”, has been accepted by this Court in a couple of decisions. It is axiomatic that without a cause, there cannot be any action. However, in the context of a writ petition, what would constitute such “cause of action” is the material facts which are imperative for the writ petitioner to plead and prove to obtain relief as claimed.

17. Determination of the question as to whether the facts pleaded constitute a part of the cause of action, sufficient to attract clause (2) of Article 226 of the Constitution, would necessarily involve an exercise by the high court to ascertain that the facts, as pleaded, constitute a material, essential or integral part of the cause of action. In so determining, it is the substance of the matter that is relevant. It, therefore, follows that the party invoking the writ jurisdiction has to disclose that the integral facts pleaded in support of the cause of action do constitute a cause empowering the high court to decide the dispute and that, at least, a part of the cause of action to move the high court arose within its jurisdiction. Such pleaded facts must have a nexus with the subject matter of challenge based on which the prayer can be granted. Those facts which are not relevant or germane for grant of the prayer would not give rise to a cause of action conferring jurisdiction on the court. These are the guiding tests.”

25. Keeping in view the ratio of the above precedent, wherein numerous earlier judgments of the Hon'ble Supreme Court and so also of the U.S. Supreme Court were considered, are of the view that the aspersions cast by Mr. Pertin that the Chief Justice, while hearing a matter, wherein challenge is laid to an administrative decision of transferring a writ petition from the Outlying Bench to the Principal Seat, acts as a Judge in his own cause, is misconceived and hence, the said objection based on the Latin maxim *nemo judex in causa sua*, does not merit acceptance.

26. Now, we proceed to take up the issues on merits.

27. As regards the fervent contention of Mr. Pertin that the decision to transfer the writ petitions filed before the Itanagar Permanent Bench to the Principal Seat tantamounts to lowering the dignity of the Itanagar Permanent Bench and also casts a shadow on the competence and integrity of the Judges holding Court at Itanagar Permanent Bench, we feel that the said submission is also unacceptable and untenable on the face of the record.

The transfer of a particular file/case from Itanagar Permanent Bench to the Principal Seat can never be construed to imply that the said decision taken by the Chief Justice on administrative side, is a measure of casting aspersion on the competence/integrity of the Judges at the Itanagar Permanent Bench.

For record, it may be stated here that uptil now, after establishment of the Itanagar Permanent Bench, in the year 2000, a total of about 87 files have been transferred from Itanagar Permanent Bench to Principal Seat at Guwahati. On many a occasion, the Chief Justice is required to transfer the files/cases on

the ground that appropriate Division Bench cannot be constituted at Itanagar so as to hear the appeals arising from the order passed by learned Single Judge sitting at Itanagar Permanent Bench. Would such a decision mean that the jurisdiction of the Itanagar Permanent Bench is being usurped or that the decision casts a shadow on the competence or integrity of the Presiding Judges at the Itanagar Permanent Bench? The answer is a firm no and we are afraid that the said projection of Mr. Pertin is absolutely flawed and has no legs to stand.

28. Sub-Section (3) of Section 24 of the Act of 1986 makes it clear that the Judges and Division Courts of the Common High Court, i.e. the Gauhati High Court, may also sit at such other place or places in the States of Assam, Nagaland, Mizoram and Arunachal Pradesh as the Chief Justice may, with the approval of the Governor of the State concerned, appoint. Hence, there is no concept of exclusivity of the Judge/Judges of Gauhati High Court so as to associate them with any particular permanent Bench or otherwise. Each Judge of the Gauhati High Court is for all practical purposes, a Judge of the Principal Seat at Guwahati and the three Outlying Benches. The Chief Justice of the Gauhati High Court is empowered by the Constitution of India to assign a roster to any of the Hon'ble Judges, including himself to hear the cases at the Principal Seat at Guwahati or at any of the Benches.

Thus, merely because a particular file/case or a few files/cases have been directed to be transferred by the Chief Justice from Itanagar Permanent Bench exercising administrative powers conferred by virtue of proviso to Clause 2 of the Notification dated 18.07.2000 to the Principal Seat at Guwahati, the said

decision can, in no manner, be construed as questioning or casting a doubt on the competence or integrity of the Judges holding Court in Itanagar.

As a matter of fact, stationing of Judges, either at Principal Seat or at the Outlying Benches, is made purely for the purpose of drawing salary from the State concerned and not for any other purpose whatsoever. The place of sitting of the Judge/Judges is decided by the Chief Justice while assigning the roster to hear the cases.

Hence, the above submission made by Mr. Pertin is devoid of merit.

29. The next submission of Mr. Pertin, based on order No.41/2005 dated 26.10.2005, which is reproduced (supra) was that under this Order the jurisdiction of the Benches has been defined and hence, the cases arising from the jurisdiction of a particular Bench can only be filed and heard before the concerned Bench. We feel that the said submission is also without any merit.

The language of the order No.41/2005 provides that "**all the cases pertaining to the Permanent Benches of Gauhati High Court, whether filed at earlier point of time or at the future at Principal Seat for absence of to be filed in future at the Principal Seat for absence of appropriate Bench at the Outlying Benches, shall stand transferred to the respective Benches of the High Court immediately after completion of motion and/or admission**".

Hence, the Order dated 26.10.2005 also affirms the authority of the Chief Justice to direct that cases arising from the Permanent/Outlying Benches can, for want of appropriate Bench,

be filed at the Principal Seat and would be liable to be transferred after completion of motion/admission hearing.

30. Now, we proceed to consider the submission advanced by Mr. Pertin based on the ratio on the judgments in the cases of **Rajasthan High Court Advocates Association** (supra) and **Hindustan Paper Corp. Ltd.** (supra). The judgment in **Hindustan Paper Corp. Ltd.** (supra) simply relies upon the law laid down by Hon'ble Supreme Court in the case of **Rajasthan High Court Advocates Association** (supra).

In the case of **Rajasthan High Court Advocates Association** (supra), the issue which was presented before the Hon'ble the Supreme Court was as to whether the cases arising anywhere in the State of Rajasthan could be filed and heard before the Principal Seat of Rajasthan High Court at Jodhpur. Primarily, the dispute in the said case related to the jurisdiction of the Principal Seat of the Rajasthan High Court at Jodhpur to hear the cases and/or to define jurisdiction of the Permanent Bench at Jaipur.

Clearly thus, the controversy, which was adjudicated by Hon'ble the Supreme Court in the said judgment pertained to defining the territorial jurisdiction/ cause of action and not regarding the power of the Chief Justice to transfer a particular case/cases by exercising administrative powers. Rather, Hon'ble the Supreme Court at paragraph 18 of the judgment in **Rajasthan High Court Advocates Association** (supra) clearly provided that the cases are to be filed and heard as per the defined territorial jurisdiction, unless the Chief Justice may direct otherwise under the discretionary power vested by the proviso to Para 2 of the

Presidential Order. Paragraph 18 of the aforesaid judgment reads as under:-

“18. It was submitted at the end by the learned counsel for the appellant that the Division Bench of the High Court in its impugned order has observed that the permanent bench at Jaipur shall have “exclusive jurisdiction” to hear the cases arising out of the 11 specified districts and the High Court at Jodhpur shall not have jurisdiction to hear those cases which fall within the territorial jurisdiction of Jaipur Bench. He submitted that the use of word “exclusive” pre-fixed to “jurisdiction” is uncalled for. We find no substance in this contention as well. **The purpose of the Presidential Order is to carve out and define territorial jurisdiction between the principal seat at Jodhpur and the permanent bench seat at Jaipur. The cases are to be heard accordingly unless the Chief Justice may exercise in his discretion the power vested in him by the proviso to para 2 of the Presidential order.** Clauses (1) and (2) of Article 226 of the Constitution provide how territorial jurisdiction shall be exercised by any High Court. Although the said clauses do not deal with principal seat or permanent bench of any High Court but in our opinion, there is no reason why the principle underlying thereunder cannot be applied to the functioning of the bifurcated territorial jurisdiction between the principal seat and permanent bench seat of any High Court. In case of a dispute arising whether an individual case or cases should be filed and heard at Jodhpur or Jaipur, the same has to be found out by applying the test — from which district the case arises, that is, in which district the cause of action can be said to have arisen and then exercising the jurisdiction under Article 226 of the Constitution.”

31. Hence, the ratio of the said judgment and the observations highlighted (supra), make it clear that the discretion conferred upon the Chief Justice by proviso to para 2 of the Presidential Order prevailing in Rajasthan, which is *pari materia* to Presidential Order dated 18.07.2000, gives absolute discretion to the Chief Justice to direct that any case or class of cases arising in any district within the dominion of the Permanent Bench at Jaipur may be transferred and heard at the Principal Seat of the Rajasthan High Court at Jodhpur.

32. In view of the ratio of the Supreme Court judgment in the case of ***Rajasthan High Court Advocates Association*** (supra), it is

clear that the challenge laid by the petitioners to the discretionary administrative power of the Chief Justice in transferring a case/cases from the Outlying Bench to the Principal Seat, cannot be tested on the touchstone of territorial jurisdiction or cause of action. The discretion so conferred upon the Chief Justice does not tantamount to determining or altering the territorial jurisdiction or deciding the cause of action of the particular case/cases.

In the case of *Hindustan Paper Corporation Limited* (supra), the dispute primarily adjudicated, was regarding the jurisdiction and the place where the cause of action had arisen. In the said case, the learned Single Judge overruled the objection raised by the Corporation regarding the maintainability of the writ petition on the ground that the Shillong Bench of the Gauhati High Court had no territorial jurisdiction to entertain the writ petition. The said judgment does not specifically deal with the power of the Chief Justice under the Proviso to Clause 2 of the Notification dated 18.07.2020 and hence, the ratio thereof does not come to the rescue of the petitioners.

33. The submission of Mr. Pertin that the administrative order, whereby the writ petitions (supra) have been transferred from Itanagar Permanent Bench to the Principal Seat, is without reasons and also does not hold water.

It may be stated here that the writ petitions WP(C) No.206(AP)/2021 and WP(C) No.208(AP)/2021 came to be transferred vide administrative order dated 09.03.2022 passed by the then Chief Justice in connection with WP(C) No.5402/2020 which had been preferred before the Principal Seat. The respondent No.2 in the aforesaid writ petitions was the General

Manager, NHPC, Gerekamukh, District Dhemaji, having its Office in Assam and hence, the said writ petition was fit to be entertained in the Principal Seat of the Gauhati High Court. The order, whereby the two writ petitions (supra) and all similar petitions were directed to be transferred to Guwahati, was evidently passed so as to ensure uniformity in decision.

The petitioner in WP(C) No.5402/2020 chose the forum by filing the same at the Principal Seat of the High Court at Guwahati. Since the respondent No.2 in WP(C) No.206(AP)/2021 and WP(C) No.208(AP)/2021 has its office in Assam, without any doubt, the writ petitions aforesaid were even fit to be filed and entertained at the Principal Seat.

34. As a consequence, we do not find any infirmity in the administrative decision of the Chief Justice of Gauhati High Court in directing transfer of WP(C) No.206(AP)/2021 and WP(C) No.208(AP)/2021 and other similar writ petitions from the Itanagar Permanent Bench for analogous hearing with WP(C) No.5402/2020 before the Principal Seat at Guwahati.

That apart, it needs to be highlighted that with the advent of technology and the well established practice being followed by the Gauhati High Court at its Principal Seat and the Outlying Benches in Arunachal Pradesh, Mizoram and Nagaland to allow hybrid hearings, the learned counsel representing the parties cannot feign any difficulty in addressing the Bench at Guwahati from Itanagar. Rather, it is manifest that Mr. T. Pertin, learned counsel representing the petitioners has effectively and to his heart's content and without any glitch addressed the Division Bench at Principal Seat by virtual hearing process. Thus, the

counsel engaged by the petitioners and the respondents in the transferred writ petitions can very well advance their arguments from Itanagar by adopting the virtual hearing mode without any hitch, hindrance or reservation. In a recent direction issued by Hon'ble the Supreme Court, all High Courts have been directed to provide a virtual hearing link in the daily cause list. Thus, the counsel desirous to address the Court virtually can take recourse of the said facility thereby, alleviating the projected difficulties of travelling and additional expenditure.

35. As a result of the above discussion, we do not find any substance in the submissions of the petitioners' counsel.

Hence, the writ petition fails and is dismissed as being devoid of merit.

JUDGE

CHIEF JUSTICE

Comparing Assistant