

Court No. - 1

Case :- P.I.L. CIVIL No. - 14171 of 2020

Petitioner :- Asok Pande (In-Person)

Respondent :- U.O.I. Thru. Secy. Ministry Of Law & Justice, New Delhi &Ors

Counsel for Petitioner :- In Person

Counsel for Respondent :- C.S.C.,A.S.G.

Hon'ble Pankaj Kumar Jaiswal,J.

Hon'ble Dinesh Kumar Singh,J.

1. The present petition under Article 226 of the Constitution of India has been filed as Public Interest Litigation (PIL)with followingprayers: -

“1. Issue a writ, order or direction in the nature of Mandamus thereby directing the Respondent No. 1 to re-name the Allahabad High Court as Prayagraj High Court or Uttar Pradesh High Court;

2. Issue any other writ, order or direction which this Hon'ble court deem fit and proper in the facts of the case.”

2. Before dealing with the merits of this petition, it would be apposite to state in brief the history of Allahabad High Court . Queen Elizabeth in England issued Charter of 1600. Pursuant to this Charter “East India Company” was incorporated to trade with East Indies. The “British East India Company” set up trading establishment on the East and West Coasts of India and in Bengal. Charter of 1600 was issued mainly for the purposes of trade in order to meet competition with Portuguese and Dutch. This Charter also contained provisions necessary for constitution of a Government according to law in any territory. Charter of 1661 empowered ‘East India Company’ to appoint Governor's Council, and, appoint other officers for their help. Governor and Councils were authorized to administer justice in all the causes, civil as well as criminal, according to the laws of Kingdom and execute judgments accordingly.King William III granted a Charter in 1698 to establish ‘English East India Company’. East India Company, which was incorporated by Charter of 1600, got amalgamated with English East India Company. This Company carried on its trade and business in the East Indies, including India.

3. In due course, the East India Company conquered a vast territory of India and became sovereign for those territories. Slowly, the English East India Company started acquiring territories and administering the natives. As a part & parcel of administration, the East India Company established Courts of law in different places of their occupation after obtaining permission from the Crown. Even the Governor and the Board of Directors of the East India Company, sitting at England, used to issue Charters to the 'Factor', which was the head of the Factory, to administer justice to their employees and even to the natives. In due course, the East India Company conquered vast territory and became the Ruler.

4. The East India Company strengthened its hold on the native Indians. Their officers indulged in mal-practice and bad administration, which was brought to the notice of the British Government. First major freedom movement exposed the vulnerability of the East India Company which led the Queen to issue a proclamation in the year 1858 and the British Parliament passed the Government of India Act, 1858. Consequently, the East India Company and its affairs were taken over by the British Government. The British Government wanted to establish judicial institutions for rendering better justice to alleviate the corrupt practice in the judicial system.

5. For the aforesaid purpose, the British Parliament passed 'Indian High Courts Act, 1961'. Under this Act, provisions were made not only for the replacement of the Supreme Courts of Calcutta, Madras and Bombay and for the establishment of High Courts in their places, but also for the establishment of High Court by Letter Patent in any part of other Majesty's territories, not already included in the jurisdiction of any other High Court. The Calcutta High Court itself was established in place of Supreme Court by Letters Patent of 14th May 1862. In the same year, the High Court of Judicature for the Presidency of Madras and Bombay in the same Letters Patent were

issued for establishment of Madras and Bombay besides Calcutta High Court by the British Crown.

6. By virtue of Indian Councils Act, 1861, the dominion council and the provincial council were given power to legislate on the subject allotted to them, as per the Indian Councils Act, and the subsequent Legislature. The dominion council as well as the provincial council were enacting laws in their spheres without any restriction or intervention by the British authorities. Only the provincial council was given power to legislate with regard to the law courts and their affairs.

7. In North Western Province, the only Sudder Courts, which remained, were the Sudder Court of Diwani and Nizamut Adalat for the North Western Provinces. This Court sat at Agra, although Bengal Regulation-VI of 1831 had provided that it was 'to be ordinarily stationed at Allahabad'. On 24th June, 1864, the Secretary of State for India asked the Governor General in council 'to take into your consideration the question of establishing High Court in the North Western Provinces and furnish me with your opinion on the subject at an early date as practicable. Four years later from the establishment of three High Courts in Presidency Towns, on 16th March, 1866, the High Court of Judicature for the North Western Provinces came into existence under Letters Patent, replacing the only Sudder Diwani Adalat and Nizamut Adalat. Letters Patent, as subsequently amended, are the present Charter of High Court of Judicature at Allahabad. Aforesaid Charter conferred jurisdiction upon newly formed High Court in respect of Civil, Criminal, Testamentary and Interstate as well as Matrimonial matters. First sitting of High Court took place at Agra on 18.06.1866, but in 1868 it was shifted to Allahabad.

8. With regard to Avadh/Oudh, a Judicial Commissioner was appointed for disposal of Civil and Criminal cases. Court of Appeal was established in Lucknow in 1856 with a Judicial Commissioner. Initially there was only one Judicial Commissioner but he was not the highest Court of Appeal in rent and revenue cases. System of

dispensation of justice in Oudh/Avadh was different for the reason that Regulations of Bengal did not apply to Oudh/Avadh. Hence like other Non Regulation Provinces, it also remained None Regulation Territory.

9. In 1871, Oudh Civil Court Act was passed by Governor General-in-Council to consolidate and amend laws relating to Civil Courts in Avadh. Besides constituting Civil Courts in a reformed shape, Judicial Commissioner's Court was re-constituted as the highest Court. Five grades of Courts were constituted i.e. (1) Tehsildar (2) Assistant or Extra Assistant Commissioner (3) Deputy Commissioner or Civil Judge of Lucknow (4) Commissioner and (5) Judicial Commissioner. General control over all Courts of first and second grades in any District vested in Deputy Commissioner and control over courts of first three grades, in any Division, vested in Commissioner, subject to superintendence of Judicial Commissioner. Court of Deputy Commissioner was Principal Civil Court of original jurisdiction in any district. He could direct business in the Courts of first and second grades to be distributed amongst such courts as he found fit, having regard to limits of their jurisdiction. He entertained appeals from those courts except when the amount in dispute exceeded Rs. 1000/- in which case appeal lay before Deputy Commissioner and Commissioner and then to Judicial Commissioner who was empowered to refer cases, in which he entertained any doubt, to High Court of North Western Provinces.

10. In 1902, new name to two Provinces was given i.e. "United Province of Agra and Oudh". It became 'Uttar Pradesh' on 24.01.1950 under United Provinces (Alteration of Name) Order, 1950 (hereinafter referred to as "Order 1950"). The Government of India Act, 1915 was a consolidated Act and, it replaced the Indian Councils Act, 1861 and the Indian High Courts Act, 1861. Part-9 of the Government of India Act, 1915 dealt with the affairs of Indian High Courts. Letters Patent issued in 1862, 1865, 1866 etc. were repealed and substituted by Part-

9 of the Government of India Act. By Section 101(5) of Government of India Act, 1915-1919, the name of 'High Court for the North Western Provinces' was changed to "High Court of Judicature at Allahabad". The High Court at Fort William in Bengal was made as "High Court of Judicature at Calcutta".

11. Court of 'Judicial Commissioner' in Oudh/Avadh came to an end with passage of 'Oudh Court's Act', U.P. Act No. 4 of 1925 (hereinafter referred to as "U.P. Act, 1925") which also paved the way for establishment of 'Chief Court' for Oudh, consisting of a Chief Judge and four or more Judges who shall be appointed by Governor General-in-Council. Section 8 and 9 of U.P. Act, 1925 provided that 'Chief Court' would be deemed to be 'highest Court of appeal and revision' for civil appellate jurisdiction and criminal jurisdiction. By Section 21 of U.P. Act, 1925, four grades of Civil Courts in Oudh were contemplated as under:

- (1) The Court of the District Judge.
- (2) The Court of Additional Judge.
- (3) The Court of the Subordinate Judge.
- (4) The Court of the Munsif.

12. Government of India Act of 1915-1919 was repealed and replaced by the Government of India Act, 1935. Chapter-II of Part-IX of the Government of India Act, 1935 provided for the administration and powers of the High Court. By Government of India Act, 1935, Chief Court in Oudh was included within the meaning of High Court. Sections 219 to 229 of the Government of India Act, 1935 gave power to British Crown to constitute High Court by Letters Patent for any province or any part thereof or reconstitute in like manner an existing High Court, for that province or for any part thereof or where there are two High Courts, in that province, amalgamate that Courts. The Indian Independence Act was passed in 1947. In 1948, Governor General, in exercise of powers under Section 229 of the Government of India Act, 1935, issued U.P. High Courts (Amalgamation) Order, 1948,

published in gazette of Government of India. Clause-III of the Amalgamation Order, from appointed date i.e. 26thJuly, 1948, provided that High Court in Allahabad and the Chief Court in Oudh shall be amalgamated and constitute one High Court in the name of 'High Court of Judicature at Allahabad'. All these enactments have now been consolidated and repealed by the provisions of the Constitution of India which came into force on 26thJanuary 1950.

13. With the aforesaid historical backdrop, it is evident that High Court of Allahabad was created by Royal Charter. Initially, it was called as 'High Court of Judicature for North Western Provinces' which had the area of aforesaid Province but Oudh was a different Province, not governed by North Western Provinces. 'High Court of Judicature for North Western Provinces' subsequently became 'High Court of Judicature at Allahabad'.

14. Chapter-V of Part-VI of the Constitution of India deals with administration and powers of the High Courts. Articles 214-231 deal with the High Courts. Therefore, all the previous enactments, dealing with establishment, administration and affairs of the High Court, are deemed to be replaced by Articles 214-231 of the Constitution of India thereby Letters Patent were also deemed to be replaced.

15. Article 225 of the Constitution of India deals with the High Court, existing at the time of enacting the Constitution of India, which allowed the existing High Court to continue with respective powers as were exercising immediate before the commencement of the Constitution. The said provisions are quoted hereunder:-

"Article 225. Jurisdiction of existing High Courts.—
Subject to the provisions of this Constitution and to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by this Constitution, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the Judges thereof in relation to the administration of justice in the Court, including any power to make rules of Court and to regulate the sittings of the Court and of members thereof sitting

alone or in Division Courts, shall be the same as immediately before the commencement of this Constitution:

[Provided that any restriction to which the exercise of original jurisdiction by any of the High Courts with respect to any matter concerning the revenue or concerning any act ordered or done in the collection thereof was subject immediately before the commencement of this Constitution shall no longer apply to the exercise of such jurisdiction.]

16. Article 372 provides for continuance in force of existing laws and their adoption, which reads as under:

“Article 372. Continuance in force of existing laws and their adaptation.—(1) Notwithstanding the repeal by this Constitution of the enactments referred to in Article 395 but subject to the other provisions of this Constitution, all the laws in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority.

(2) For the purpose of bringing the provisions of any law in force in the territory of India into accord with the provisions of this Constitution, the President may by order—make such adaptations and modifications of such law, whether by way of repeal or amendment, as may be necessary or expedient, and provide that the law shall, as from such date as may be specified in the order, have effect subject to the adaptations and modifications so made, and any such adaptation or modification shall not be questioned in any court of law.

(3) Nothing in clause (2) shall be deemed—

(a) to empower the President to make any adaptation or modification of any law after the expiration of [three years] from the commencement of this Constitution; or

(b) to prevent any competent Legislature or other competent authority from repealing or amending any law adapted or modified by the President under the said clause.

*Explanation I.—*The expression “law in force” in this article shall include a law passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that it or parts of it may not be then in operation either at all or in particular areas.

*Explanation II.—*Any law passed or made by a Legislature or other competent authority in the territory of India which immediately before the commencement of this Constitution had extra-territorial effect as well as effect in the

territory of India shall, subject to any such adaptations and modifications as aforesaid, continue to have such extra-territorial effect.

Explanation III.—Nothing in this article shall be construed as continuing any temporary law in force beyond the date fixed for its expiration or the date on which it would have expired if this Constitution had not come into force.

Explanation IV.—An Ordinance promulgated by the Governor of a Province under Section 88 of the Government of India Act, 1935, and in force immediately before the commencement of this Constitution shall, unless withdrawn by the Governor of the corresponding State earlier, cease to operate at the expiration of six weeks from the first meeting after such commencement of the Legislative Assembly of that State functioning under clause (1) of Article 382, and nothing in this article shall be construed as continuing any such Ordinance in force beyond the said period.

17. All laws in force in territory of India would govern not only enactment of the Indian Legislatures but also the common law of the land, which was being administered by Courts in India. The same included not only the present law but also the rules of the English Common Law, such as rules of interpretation of statutes etc. (AIR, 192 Bombay, 214). The State Government changed the name of city of Allahabad to Prayagraj on 16th October, 2018 and, in this backdrop this petition has been filed.

18. Article 215 provides that there shall be a High Court for each State. Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.

19. By virtue of Article 372 until and unless the Parliament amends the amalgamation order, the name of the high court, which is 'High Court of Judicature at Allahabad' cannot be changed. When the petitioner was put a question during the course of arguments that who could change the name of the High Court, he did not give answer.

20. In constitutional democracy, all organs of the State, i.e. executive, legislature and judiciary, are required to act and performed

their respective functions within the limits prescribed by the Constitution of India. The separation of powers is the foundation of functioning of a democratic polity governed by rule of law. One organ should not encroach upon the power and functions of other organs. The Courts cannot direct the Legislature to enact a particular law and, therefore, this Court finds that the present writ petition is nothing but a ‘publicity stunt litigation’ which has been filed to get some publicity. If the petitioner is so concerned, he should convince the Parliament for change of name of the High Court. This Court is not empowered to direct the Parliament or State Legislature to enact a particular law and, therefore, we find this petition a frivolous petition, which has been filed with sole purpose of gaining some publicity. We, therefore, **dismiss** this petition, but refrain ourselves from imposing cost as the petitioner is none other than a practicing Advocate of this Court.

Order Date:- 31.08.2020

MVS/-

Justice Dinesh
Kumar Singh

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KUMAR
JAISSWAL

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