R

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF MAY, 2023

PRESENT

THE HON'BLE MR. JUSTICE B. VEERAPPA

AND

THE HON'BLE Mrs. JUSTICE K.S. HEMALEKHA

WRIT PETITION No.21879/2014 (GM-RES)-PIL

BETWEEN:

SRI.N.P.AMRUTESH,
S/O. LATE PUTTASWAMY,
AGED 54 YEARS,
R/O NO.28(103), 10TH MAIN,
BEHIND AMBEDKAR B.ED COLLEGE,
J.C. NAGAR, KURUBARAHALLI,
BANGALORE-560 086. ...PETITIONER

(BY SRI V.R., DATTAR, ADVOCATE FOR
SRI N. K. SIDDESWARA, ADVOCATE)

AND:

1 . THE UNION OF INDIA,
MINISTRY OF LAW AND JUSTICE SOUTH BLOCK,
NEW DELHI-110 001,
REPRESENTED BY ITS SECRETARY.

2 . THE HONOURABLE HIGH COURT OF KARNATAKA,
BANGALORE-560 001,
REPRESENTED BY ITS REGISTRAR GENERAL.

3 . THE HONOURABLE CHIEF JUSTICE,
HIGH COURT OF KARNATAKA,
BANGALORE-560 001.

4 . THE STATE OF KARNATAKA,
DEPARTMENT OF LAW AND JUSTICE,
VIDHANA SOUDHA, DR. AMBEDKAR VEEDHI,
BANGALORE-560 001,
REPRESENTED BY ITS SECRETARY.

5 . THE AUDITOR AND COMPTROLLER
GENERAL OF INDIA,
HAVING HIS OFFICE,
OPP: VIDHANA SOUDHA (NORTH),
BANGALORE-560 001.

6 . GULBARGA HIGH COURT
ADVOCATES ASSOCIATION,
HIGH COURT OF KARNATAKA ,
BENCH AT GULBARGA,
GULBARGA 585103,
REP. BY ITS PRESIDENT / SECRETARY.

7 . DHARWAD HIGH COURT
ADVOCATES ASSOCIATION,
HIGH COURT OF KARNATAKA ,
BENCH AT DHARWAD,
DHARWAD 580011,
REP. BY ITS PRESIDENT/SECRETARY.

….RESPONDENTS

IMPLEADING APPLICANT IN I.A. No.1/2016:

SIDDARAMAPPA
S/O DURGAPPA,
AGE: 60 YEARS,
OCC: AGRICULTURE,
R/O MANVI, TQ: MANVI,
RAICHUR DISTRICT -584123.

(BY SRI H. SHANTHI BHUSHAN, DEPUTY SOLICITOR GENERAL OF INDIA FOR R1 AND R5;
SRI DHYAN CHINNAPPA, ADDITIONAL ADVOCATE GENERAL A/W SRI KIRAN KUMAR, HIGH COURT GOVERNMENT PLEADER FOR R4; SRI S.S. NAGANAND, SENIOR COUNSEL A/W

SRI S.G. PRASHANTH MURTHY, ADVOCATE A/W
SMT. SUMANA NAGANAND, ADVOCATE FOR R2 AND R3;
SRI KARTHIK YADAV U., ADVOCATE FOR
SRI S.K. VENKATA REDDY, ADVOCATE FOR R6;
SMT. SONA VAKKUND, ADVOCATE FOR R7 ;
SRI D.C. PARAMESHWARAIAH, ADVOCATE FOR IMPLEADING APPLICANT IN I.A.1/2016)

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THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE WRIT OF CERTIORARI OR ANY OTHER APPROPRIATE WRIT, ORDER OR DIRECTION UNDER ARTICLES 226 AND 227 OF CONSTITUTION OF INDIA BY CALLING OF RECORDS FROM THE RESPONDENT NOS.1 TO 4 REGARDING ESTABLISHMENT OF CIRCUIT BENCHES AND CONVERTING THEM INTO PERMANENT BENCHES BY ORDER DATED 19.10.2004 VIDE ANNNEXURE-E AND ORDER DATED 04.06.2008 LOCATING OF CIRCUIT BENCHES AT DHARWAD AND GULBARGA VIDE ANNEXURE-F AND MAKING IT INTO PERMANENT BENCHES BY PRESIDENTIAL ORDER DATED 08.08.2013 VIDE ANNEXURE-M AND DECLARE THEM AS UNCONSTITUTIONAL, CONTRARY TO LAW AND AS OPPOSED TO PUBLIC INTEREST.

ISSUE WRIT OF MANDAMUS OR WRIT ORDER OR DIRECTION IN THE NATURE OF MANDAMUS OR ANY OTHER APPROPRIATE WRIT ORDER OR DIRECTION UNDER ARTICLES 226 AND 227 OF CONSTITUTION OF INDIA BY DIRECTING THE RESPONDENT NO.5 TO CONDUCT PERFORMANCE AUDIT INCLUDING FINANCIAL AUDIT OF REGARDING THE INVESTMENT, EXPENDITURE AND FUNCTIONAL VIABILITY OF THESE BENCHES AT DHARWAD AND GULBARGA AND ITS SUSTENANCE IS IN PUBLIC INTEREST.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS, COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, ***B. VEERAPPA J.***, PASSED THE FOLLOWING:

O R D E R

The petitioner practicing Advocate has filed the present Public Interest Litigation seeking writ of certiorari to struck down the establishment of Circuit Benches and converting them into Permanent Bench by the order dated 19.10.2004 vide Annexures-E and F dated 4.6.2008 at Dharwad and Gulbarga and the Presidential Order dated 8.8.2013 vide Annexure-M as unconstitutional, contrary to law and opposed to public interest; and a writ of mandamus directing respondent No.5 - Auditor and Comptroller General of India to conduct performance of audit including financial audit with regard to investment, expenditure and functional viability of these Benches at Dharwad and Gulbarga and it's sustenance in public interest.

I - FACTS OF THE CASE

2. It is the case of the petitioner that he is a practicing advocate of High Court of Karnataka at Principal Bench, Dharwad and Gulbarga Benches and he is a public spirited citizen, who has taken up several causes of the citizen as also of advocates,

in the matter of maintenance of the Rule of law and efficacy of justice delivery system.

3. The petition raises several questions of law *interalia* as to the relative scope and scope of the Karnataka High Court Act, 1961 (for short, hereinafter referred to as 'Act 1961') and establishment of Permanent Bench of the High Court of Karnataka under the provisions of Section 51(2) by converting the High Court of Karnataka, Circuit Benches at Dharwad and Gulbarga and of the State Re-organisation Act, 1956(for short, hereinafter referred to as 'S.R. Act, 1956) issued under Section 51(3) of the S.R. Act, 1956 in 2004/2008. It is further contended that the establishment of the said Benches, first, as Circuit Benches and later converting them as Permanent Benches is contrary to law and severely affects the public interest as it is contrary to the dictum of the Hon'ble Supreme Court in the case of the Federation of Bar Association -vs- Union of India reported in (2000)6 SCC Page 715 apart from the recommendation of Hon'ble Justice Jaswant Singh's Commission Report, since factually the number of cases, filed, disposed of

and the expenditure incurred in maintenance of these establishments are not conducive to the public interest, as it affects the functional integrity and unity of the institution of the Hon'ble High Court. The respondents are the respective authorities representing His Excellency, the Hon'ble President of India, the Hon'ble Chief Justice of Karnataka and His Excellency, the Governor of Karnataka thus answering the description of the term within the meaning of Article 12 of the Constitution of India and the 5th respondent is a Constitutional authority responsible for undertaking performance of audit, including financial audit of Public Institutions/Authorities.

4. The petitioner further stated that the Mysore High Court Act, 1884 (for short, hereinafter referred to as 'Act, 1884') was enacted to establish and constitute the High Court of Mysore and to provide for administration of Justice by the High Court of Mysore. Section 3 of Act, 1984 defines the term 'High Court' which means the Chief Justice of the High Court and refers to the Chief Court or to the High Court in any Regulation, Act or other Laws for the time being in force and shall be deemed to

have been made to the High Court of Mysore. The provisions of Section 17 of Act, 1884 prescribes that the High Court shall hold its sittings at such place as the State Government may, from time to time, appoint any other place by way of Circuit, *interalia*. Section 19 of Act, 1884 permits the High Court to make Rules for exercise of powers of one or more of its judges under the said Act or any other Enactment. The Rules made thereunder were required to receive sanction from the State Government under Section 21 of the Act. Section 14 of the Act 1961 has continued and retained the operation of provisions of Sections 17, 19 and 21 of the Act, 1884 *interalia* which has the force of law under Article 372 of the Constitution of India.

5. It is the further stated of the petitioner that under the Constitution of India as framed in 1950, the State of Mysore was classified as Part-B State. Under Section 12 of the States Re-organisation Act, 1956 (for short, hereinafter referred to as 'S.R. Act, 1956) Parts-A, B and C of the Constitution were modified/deleted and following parts were substituted whereby Part-A state at Sl.No.8 Mysore with territories specified in Sub-

section 1 of Section 7 of the States Re-organisation Act amended the provision of State of Mysore being Part-B State and formation of a new Mysore State was created under Section 7 of the S.R. Act.

6. It is further stated of the petitioner that Sub-Section(1) of Section 7(b) of Belgaum District except Chandgad Taluks and Bijapur, Dharwad and Kanara Districts which were existing in the then State of Bombay and also under (c) Gulbarga District except Kodanga and Tandur Taluks, Raichur District except Alampur and Gadwal Taluks and Bidar District except Admadpur, Nilanga and Udgir Taluks and the portions specified in clause (d) of Sub-Section (1) of Section 3 in the existing State of Hyderabad became part of the new State of Mysore. It is further contended that under Part-V of the S.R. Act, 1956, High Courts were established under Section 49(2) which reads as under:-

> "As from the appointed day, there shall be a established High Court for each of the new States of Kerala, Mysore and Rajasthan."

7. The petitioner further states that High Court of Mysore was established under the S.R. Act, 1956 which came into effect in Mysore/Karnataka from 1.11.1956 and the new High Court of Mysore at Bangalore started functioning from 1.11.1956. Under Part-V, Section 51(1) of the S.R. Act, 1956, Principal Bench of the High Court of Mysore was established at Bangalore. Section 51 contemplates Principal seat and other places of High Courts for new States shall be at such place as the President may, by notified order, appoint after consultation with the Governor of a new State and the Chief Justice of the High Court for that State, by notified order, provide for the establishment of a Permanent Bench or Benches of that High Court at one or more places within the State other than the principal seat of the High Court and for any matters connected therewith. Notwithstanding anything contained in sub- section (1) or sub- section (2), the Judges and division courts of the High Court for a new State may also sit at such other place or places in that State as the Chief Justice may, with the approval of the Governor, appoint. It is further contended that Section 69 of the said Act contemplates 'Savings', that nothing in this Part shall affect the application to

the High Court for a new State of any provisions of the Constitution, and this Part shall have effect subject to any provision that may be made on or after the appointed day with respect to that High Court by any Legislature or other authority having power to make such provision.

8. It is the further stated by the petitioner that after coming into force the Constitution in the year 1950, the High Court of Mysore which was functioning under the 1884 Act, having its seat of justice at Bangalore, continued to exercise its jurisdiction throughout in the then existing territories under the First Schedule of the Constitution to the Part-B State. Under the Constitution by virtue of Article 372, it continued to operate and exercise its jurisdiction even after the 1956 Act came into effect, and exercised its jurisdiction in the existing territories under Part B State and also on the new territories i.e., Districts which merged and formed the new State of Mysore. In view of Section 62 of 1956 Act, pending proceedings before the High Court of Bombay, Madras and Hyderabad were transferred to the Mysore High Court. Therefore, in terms of Article 214 of the Constitution

of India, the High Court of Mysore was established having its Principal Bench at Bangalore, and had continued to do so even after S.R. 1956 Act came into force. Thereafter, the Mysore High Court Act, 1961 Act 5 of 1962 came to be enacted which provided for an Act 'to make provisions for regulating business and exercise of powers of the State of Mysore/Karnataka in relation to the administration of justice and to provide for its jurisdiction'. Though in the meantime, the High Court of Mysore/Karnataka Rules 1959 came into effect which provided Chapter-II Rule 1 (a) for the Principal Bench at Bangalore, which was in terms of Section 49(2) of the S.R. Act, 1956 and as the said Rules were framed under Article 225 of the Constitution r/w Section 54 of S.R. Act, 1956, Sections 122 and 129 of the Code of Civil Procedure, Section 19 of the Mysore High Court Act which had same force of law as though enacted under Article 254 of the Constitution being precursor to the subsequent High Court of Mysore (Karnataka) Act, 1961, being saved under Section 69 of the S.R. Act, 1956 which also recognized the only place of sitting of the Principal Bench at Bangalore.

9. It is further stated that the preamble of the 1961 High Court Act provides that "Whereas it is expedient to make provision for regulating the business and the exercise of powers of the State of Karnataka in relation to the administration of justice and to provide for its jurisdiction and other matters hereinafter appearing thereby the then existing Mysore State Legislature enacted the Mysore High Court Act which received the Presidential assent on 25.12.1961." It is further contended that in view of Article 214 of the Constitution under Chapter 5 of Part-6 of the Constitution, the then existing Mysore High Court continued to exercise its jurisdiction in Part-B State under the Constitution and after 1956 Act came to be enacted and enforced, it exercised its jurisdiction in respect of the new territories added/merged with the State of Mysore. Hence, after re-establishment of the Principal Bench for the new State of Mysore under Section 49(1) and (2) r/w 51(1) of the S.R. Act, 1956 and Section 51 as a whole was not applied to the new State of Mysore as it had an existing High Court/Chief Court in the State of Mysore and continued to be a High Court for the New State of Mysore in terms of Section 7 of the S.R. Act, 1956.

Thereby the application of Section 51(2) and 51(3) did not and would not arise at that point of time. The authorities mentioned in the said provision did not deem it necessary to either establish any separate permanent Benches under Section 51(2) of the S.R. Act nor there was a need to establish Circuit Benches under Section 51(3) of the S.R. Act. Therefore, the provisions of Section 51(2) and 51(3) could not be invoked in the absence of provisions of the Mysore High Court Act, 1961 as the application of Part V of the States Re-organisation Act is enabling provision if the appropriate Legislature had not enacted any law with respect to the High Court in terms of saving clause in Part V Section 69 of the S.R. Act, 1956. However, immediately after the New State of Mysore came into existence firstly High Court of Mysore/Karnataka Rules 1959 were framed and immediately thereafter, the State Legislature enacted High Court of Mysore/Karnataka Act, 1961, which estopped invoking of provisions of Section 51(2) and 51(3) of the S.R. Act by respondent Nos.1 to 3 as the 1961 Act was self contained enactment and by virtue of Section 69 of the S.R. Act, 1956, no contingency of establishment of Permanent Benches at any other

place than at Bangalore was envisaged, which is also the considered view of the Hon'ble Supreme Court in the case of Federation of Bar Associations reported in (2000)6 SCC 715 as also recommended by the Justice Jaswant Singh Commission.

10. The petitioner further states that under 1961 Act, the Legislature thought it fit not to make provision for establishment of either a Circuit Bench or a Permanent Bench anywhere outside the seat of Principal Bench at Bangalore as it was felt that there was no need for necessity. State of Mysore/Karnataka as created under the S.R. Act, 1956 came into existence based on the language spoken (i.e., Kannada Language) in the territories merged and unification of Kannada speaking people into the State of Mysore as it existed then. Hence, merged territories accepted the High Court of Mysore with it's Principal seat of Justice at Bangalore as their High Court. Moreover, the State of Mysore was an existing State in Part-B with addition of new territories, its territorial extent was enlarged to include Kannada Language loving people, who merged/integrated into State of Mysore physically, emotionally and psychologically and as the

Seat of Government, Bangalore was the Capital City. The Principal Seat of Justice was also Bangalore and there was no incongruity in both being at one place which was felt, it did not allow any fissiparous or divisive tendencies after the new State of Mysore came into existence. Many of the Lawyers/Advocates who were then Practising at High Court of Bombay or at Hyderabad or at other District lever places migrated to Bangalore and established their practice at the High Court of Mysore/Karnataka at Bangalore and never expressed regrets for having come over to Bangalore, which is the Garden City.

11. It is further stated that it appears in the year 1973-74, section of Advocates at Dharwad started agitation for establishment of a Permanent Bench at Permanent Bench at Dharwad. However, the same was not conceded either by the Government of Karnataka or by the High Court of Karnataka. It appears that under misconception of applicability of Section 51 of 1956 Act, agitation was started and ultimately, it was rejected 8 out of 9 times by the High Court of Karnataka in its Full Court and Union Government being apprised of the demand for

establishment of Permanent Bench at Dharwad i.e., outside Bangalore, referred the question of establishment of Permanent Bench outside Principal seat of High Court at Bangalore, in the North Karnataka region to Justice Jaswant Singh Commission which was enquiring into this issue in respect of establishment of Bench in the State of Madhya Pradesh and Madras/Tamilnadu, which enquired into the matter and in it's report submitted that there was no necessity nor need to establish permanent Bench in State of Karnataka outside its Principal Bench at Bangalore.

12. Further the said report and the opinion was challenged before the Hon'ble Supreme Court by the Federation of Bar Association in Karnataka against the Union of India and the Hon'ble Supreme Court by the order dated 24.7.2000 held that the establishment of a Bench of High Court away from Bangalore is inadvisable. Not satisfied with the said decision, Dharwad Bar Association addressed a letter/representation on 12.10.2001 to the Hon'ble Chief Justice then to reconsider the establishment of High Court at Dharwad. Thereafter, the High Court of Karnataka i.e., the then Hon'ble Chief Justice by a

Notification dated 21.3.2002 constituted 7 Member Committee to look into the matter. Under the Chairman of Mr. Justice G.C. Bharuka, a committee was constituted, who gave a report dated 6.6.2003 that the Bench may be established in Rayapur area between Hubli and Dharwad and expressed opinion that the Bench ought to be of permanent character and gave its report.

13. The said committee consisting of 7 members, submitted a report wherein a note of dissent was put by two Hon'ble Judges, who did not agree with the establishment of Permanent Bench as recommended by Justice G.C. Bharuka Committee and the remaining 5 Members took a contrary view and supported the recommendation. Therefore, the said recommendation cannot be said to be unanimous recommendation or by majority. Thereafter, on 19.10.2004 assuming power under Section 51(3) of S.R. Act, 1956, with the approval of His Excellency the Governor of Karnataka, the then Hon'bie Chief Justice of the High Court of Karnataka issued Notification notifying sitting of Judges and functioning of High Court of Karnataka at Dharwad and Gulbarga though the date of

sitting was to be notified later. Thereafter keen interest was shown by the then Hon'ble Chief Justice, the work of construction of High Court Building was expedited and on 4.6.2008, the then Hon'ble Chief Justice of Karnataka High Court issued notification establishing Circuit Bench at Dharwad and Gulbarga for hearing the cases arises from respective District of Bagalkot, Bellary, Belgaum, Dharwad, Gadag, Haveri, Uttara Kannada, Karwar and Koppal to be heard and decided at Circuit Bench at Dharwad and the cases arising from the Districts of Bidar, Bijapur, Gulbarga and Raichur to be heard and decided at Circuit Bench at Gulbarga. Pending cases were transferred for being heard and decided at Circuit Bench. However, contrary to the concept of Circuit Bench, new cases in Circuit Benches were permitted to be filed from 7.7.2008.

14. It is further stated that subsequently the notification dated 29.12.2008 was issued to post the Review Petitions relating to judgments, Decree, Order or sentence pronounced, made or passed by the Division Bench or Single Bench in respect of Circuit Bench, Dharwad, as per the roster existing in the

Circuit Bench, Dharwad. On 26.3.2010, the said notification dated 29.12.2008 came up for consideration before the Division Bench of the Circuit Bench at Dharwad. The Division Bench held that the said notification dated 29.12.2008 was contrary to Rule 5 of Chapter III of the High Court of Karnataka Rules, 1959 and accordingly quashed the said notification. However while interpreting the said notification, the Division Bench held that the notification dated 4.6.2008 establishing Circuit Benches at Gulbarga and Dharwad did not exclude the litigant from approaching the Principal bench at Bangalore for filing of the cases before the Principal Bench though could also exercise their option to file it before the Circuit Bench. It is further stated that the said judicial order was challenged by the High Court itself through the Registrar General in SLP © 7682/2010 before the Hon'ble Supreme Court. The Hon'ble Supreme Court stayed the judgment of the Division Bench, thereby the litigant public from 12 districts coming under Circuit Benches of Dharwad and Gulbarga were denied access to approach the Principal Bench of Bangalore and their cases were not entertained before the principal Bench, Bengaluru.

15. It is further stated that as the viability of these two circuit benches was in doubt, the then Hon'ble Chief Justice took the decision to give separate numbers to the interim applications to increase/boost the pendency of the cases in the two circuit benches by issuing a notification, which was again challenged before this Court and the Division Bench of this Court being of the view that the said notification is contrary to the rules, has struck down the said notification by its judgment dated 26.3.2010 in the case of ***M.S. Poojary -vs- the Registrar General*** reported in 2010(4) Kar.LJ 175. Subsequently, the said notification of giving separate numbers to the interim applications was withdrawn by the then Hon'ble Chief Justice, thereby the interim applications have been given I.A. numbers and were not treated separately for the purpose of numbering and it has reduced the pendency and infact in the year 2012 the pendency in the Gulbarga Circuit bench was less that 3,000 cases and contemplating to close it down as it was not serving any useful purpose and has become a burden on the establishment. Thereby, the petitioner approached the Information Officer of the High Court by his application dated

19.1.2013 and accordingly, he has been furnished with the information. The documents furnished would show that there was no need to continue with the circuit benches muchless make them into permanent benches in the absence of any cogent material before the authorities.

16. It is further stated that pendency of cases was on decline and both the circuit benches were not serving the purpose for which it was created/established and infact the number of Hon'ble Judges sitting at Gulbarga Bench has been reduced from 5 to 3, the Division Bench was sitting only in the forenoon session etc., However, certain vested interests, who were interested in continuance of the circuit benches sought political intervention and thereafter the matter was referred to the Union Cabinet on 4.6.2013 and the subject matter to make Circuit Benches into permanent Benches was placed before the Union Cabinet and the Union Cabinet has cleared the same on 27.3.2013. It was notified that the Union Cabinet has given approval for establishment of permanent Benches at Dharwad and Gulbarga with the concurrence of His Excellency Governor of

Karnataka and the Hon'ble Chief Justice of Karnataka. Thereafter, the President of India in exercise of the powers under Section 51(2) of the S.R. Act, 1956 issued a formal order as per Annexure-M for establishment of permanent benches of High Court of Karnataka at Dharwad and Gulbarga, thereby the Dharwad Bench would become functional as Permanent Bench from 24.8.2013 and that Gulbarga Bench from 31.8.2013 and the Chief Justice of High Court of Karnataka has been empowered to nominate Judges to sit at Dharwad and Kalaburagi Benches. It is further contended that as this was a sudden event, it appears to have not taken into account ground realities as to the status of two circuit benches as there was neither performance report was conducted nor financial audit was conducted by the 5th respondent before the decision was taken to make it into permanent bench though it involved an investment of 300-400 crores of rupees with recurring expenditure of Rs.15-18 crores per annum. Infact suitability of continuation of the Circuit benches had not been ascertained and the then Hon'ble Chief Justice had not appointed any committee to ascertain the aspect of viability and sustainability of these two

High court Benches and all of a sudden Circuit Benches converted into permanent benches. It is further contended that correspondence took place mainly for increasing the strength of the High Court Judges from 41 to 56 inter alia for notifying circuit benches at Dharwad and Gulbarga as permanent benches under Section 51(2) of the S.R. Act, 1956. Accordingly, the strength of the Karnataka High Court Judges revised to 50 i.e., 33 permanent Judges and 17 Addl. Judges and formal order dated 16.11.2009 was issued in this regard as per Annexure-S. It is further contended that it is also not known as to whether the opinion of the learned Judges was obtained in Full Court Meeting. In the circumstances, it creates suspicion that it was politically motivated than in reality judicially required and there was no consultation or assessment of functioning of the circuit benches for a period of 3 years.

17. It is further contended that Annexures – R and S as also Annexure – C are challenged in a Public Interest Litigation in Writ Petition No.24110/2011 (PIL-Res) which was admitted and was pending. Subsequently, a memo came to be filed to

withdraw the said writ petition on the ground that material on record was insufficient and certain additional information was sought under the RTI Act. Accordingly, the said writ petition came to be dismissed as withdrawn with liberty to file fresh writ petition. In the mean time in June-2013 the announcement was made that the Circuit Benches would be made permanent and the Union Cabinet had approved it and thereafter the formal notification was issued succeeded by the presidential order under Section 51(2) of the S.R. Act on 8.8.2013. Hence the present writ petition is filed for the reliefs sought for.

II. Statement of objections filed by Respondent Nos.1 & 5/Central Government

18. It is stated that in accordance with the recommendation made by the Jaswant Singh Commission and the Judgment pronounced by the Apex Court in W.P. (C) No.379 of 2000, Benches of the High Court are established after due consideration of a complete proposal from the State Government, which is to provide infrastructure and meet the expenditure, alongwith the consent of the Hon'ble Chief Justice of the High Court, which is required to look after the day to day

administration of the High Court and its Benches. The proposal has also consent of Governor of the State Government.

19. It is further stated that the Hon'ble Supreme Court in the case of ***Federation of Bar Association in Karnataka -vs- Union of India*** in Writ Petition (Civil) No.379 of 2000 held that as the Chief Justice of High Court concerned is the important consultee in the matter of establishment of a Bench of the High Court, he being the head of that High Court has to form an opinion when it is required during such consultation process. Normally, the Chief Justice will not be guided by any Political or Parochial considerations and when he gives opinion, it is the opinion of the High Court and not merely his personal opinion.

20. It is further stated that the Bench of High Court was established after receiving the complete proposal from the State Government, in consultation with the Chief Justice of the High Court and the Governor of the State. The Chief Justice of Karnataka High Court in July, 2009 had requested the Central Government to notify the Circuit Benches of the High Court of Karnataka at Dharwad and Gulbarga as permanent Benches

under Section 51(2) of the S.R. Act, 1956 and to enhance the sanctioned strength of Hon'ble Judges of the Karnataka High Court from 41 to 56.

21. It is also stated that after approval of the Chief Justice of India and with concurrence of the State Government, 6 posts of additional Judges for Dharwad Bench and 3 posts for Gulbarga Bench were created in November 2009. The proposal for establishment of permanent Benches of the High Court of Karnataka at Dharwad and Gulbarga and issuing Presidential Order under Section 51(2) of the S.R. Act, 1956 was placed before the Central Cabinet, which in its meeting dated 4.6.2013 had approved the above proposal. Accordingly, a notification for operationalization of permanent Benches of the Karnataka High Court at Dharwad, w.e.f 24.8.2013 and Gulbarga w.e.f. 31.8.2013 was issued on 14.8.2013.

22. Respondent Nos.1 & 5 further stated that the sitting of the Judges of High Court of Karnataka in Single and Division Bench at Dharwad and Gulbarga and establishment of Circuit Benches of the Karnataka High Court at Dharwad and Gulbarga

were notified by the Karnataka High Court in consultation with the State Government. This was done under Section 51(3) of the S.R. Act, 1956. The notification of operationalization of permanent Benches of the Karnataka High Court at Dharwad and Gulbarga was issued by the Central Government on 14.8.2013 with the concurrence of the Chief Justice of the Karnataka High Court, State Government and Governor of the State. The said notification was issued under Section 51(3) of the S.R. Act, 1956.

23. It is further stated that the Cabinet in its meeting dated 4.6.2013 approved the establishment of permanent Benches of the Karnataka High Court at Dharwad and Gulbarga and accordingly presidential order was issued after approval of the Cabinet. The notification for establishment of Permanent Benches of the Karnataka High Court at Dharwad and Gulbarga was issued in exercise of the powers under Section 51(2) of the S.R. Act after consultation with the Governor of Karnataka and the Chief Justice of the High Court of Karnataka. The Hon'ble Supreme Court in Writ Petition No.379/2000 also held that the

High Court is the best suited machinery to decide whether it is necessary and feasible to have a bench outside the principal seat of that High Court. It is submitted that the recommendations made by the Jaswanth Singh Commission was referred to the concerned authorities and the action was taken by the Central Government as per the existing procedure and that establishment of permanent Benches at Dharwad and Gulbarga was a policy decision taken by the Government in exercise of its sovereign functions. It is further contended that establishment of permanent Benches at Dharwad and Gulbarga is a public welfare measure. The establishment of permanent benches should not be construed as an investment for returns at all, but should only be taken as "*Pro Bono Publico*" measure, thereby sought to dismiss the writ petition.

III. Statement of objections filed by learned counsel for Respondent Nos.2 and 3

24. The Respondent Nos.2 and 3 stated that even though the present writ petition is filed in the form of Public Interest Litigation, the element of public interest is totally absent and

the petitioner cannot be considered as an 'aggrieved person' and cause reflected in the writ petition cannot be considered as a public cause and on that ground alone the writ petition is liable to be dismissed.

25. It is further stated that the Chief Secretary, Government of Karnataka, Bengaluru by D.O. letter dated 19.10.2004 addressed to the Hon'ble Chief Justice, High Court of Karnataka informed that His Excellency the Governor of Karnataka has approved the proposal for establishment of High Court circuit benches at Dharwad and Gulbarga under the provisions of Section 51(3) of the S.R. Act. Subsequently, a notification was issued as required under Section 51(3) of the S.R. Act. In the said notification, the sittings of Single Judges and Division Benches of High Court of Karnataka at Dharwad and Gulbarga and also the date of sitting was proposed to be notified after securing a report of the Hon'ble Committee which was constituted exclusively for establishment of examining feasibility of circuit benches as per the order passed by the Hon'ble Chief Justice. It is further contended that as a matter of fact a

studied and thoughtful decision was taken to establish circuit benches at Dharwad and Gulbarga. Various aspects which were required to be considered were considered threadbare and a final decision was taken in the interest of the public and the same cannot be found fault with by anyone including the petitioner.

26. It is further stated that the pendency of cases as on 31.5.2014 in the Dharwad Bench was 41,777 and in the Gulbarga Bench was 17,050 and the sanctioned strength of the Hon'ble Judges in the High Court of Karnataka as on 2014 was 50 and number of permanent Judges was 33 and number of Additional Judges was 17. It is contended that the proposal for establishment of circuit benches was examined in detail by the Committee of Hon'ble Judges headed by Hon'ble Sri Justice G.C. Bharuka. The Committee considered the demand of people of North Karnataka for establishment of Benches therein, in addition to other aspects. Selection of land for construction of Circuit Bench buildings was also done on proper and relevant consideration and as per the recommendation by the committee of Hon'ble Judges.

27. It is further stated that the Hon'ble Supreme Court in the case of ***Federation of Bar Association in Karnataka -vs- Union of India*** reported in (2000)6 SCC 715 held that High Court is the best-suited machinery to decide whether it is necessary and feasible to have a Bench outside the principal seat of that High Court, thereby it is clear that the Hon'ble Chief Justice has got every power and authority to recommend for establishment of Benches outside the Principal Bench and hence the prayer of the petitioner seeking for quashing the notification dated 19.10.2004, is not sustainable in law. The present writ petition filed by the petitioner lacks any public interest of preserving structural and functional integrity and composition of the institutions of High Court and in preventing disintegration. In exercise of the powers conferred under sub-section (2) of Section 51 of the S.R. Act, 1956 the President, after consultation with the Government of Karnataka and Chief Justice of High Court of Karnataka was pleased to order the operationalization of the permanent Bench of High Court of Karnataka at Dharwad from 24.8.2013 and at Gulbarga from 31.8.2013. The establishment of Permanent Benches at Dharwad and Gulbarga

was as a result of need based demand and necessity of the people of the northern Karnataka and later they were converted into permanent benches. A lot of agitation took place by the Advocates of that region and the litigant public as also public at large joined in putting forth their demands. The establishment of High Court Benches is a policy decision taken as per the constitutional scheme. The very preamble of the Constitution of India mandates that all efforts be taken to render justice to a common man. Under the circumstances, the writ petition is liable to be dismissed with costs.

IV. Regarding particulars/material furnished by Respondent Nos.2 and 3 in pursuance of the order dated 3rd March 2023

28. We have heard the learned counsel for the parties in the entire afternoon session on eight hearing dates, at length from 7.12.2022 to 3.3.2023 and sufficient opportunity was given to both the parties to putforth their respective cases. By the order dated 3.3.2023, this Court directed the respondent Nos.2 and 3 to furnish the following particulars/material pertaining to

Benches at Dharwad and Kalaburagi separately from the date of the establishment of the Benches till 3rd March 2023.

1) *Pendency of cases as on the date of establishment of the Benches;*

2) *The amount spent for infrastructure of the buildings in both the Benches;*

3) *Number of employees appointed in both the Benches;*

4) *Number of cases disposed in both the Benches,*

5) *The amount spent by the State Government for both the Benches.*

29. Learned counsel for Respondent Nos.2 and 3 produced the relevant material on 24.3.2023 and subsequently alongwith the Memo dated 11.4.2023, High Court has furnished the statements showing the expenditure incurred towards salary, allowances etc., at Dharwad and Kalaburagi Benches from 2008-09 to 2022-23.

V. Arguments advanced by learned counsel for the petitioner

30. Sri V.R. Datar, learned counsel for the petitioner contended that in view of the provisions of Article 214 of the

Constitution of India there shall be a High Court for each State. Section 51 of the S.R. Act, 1956 contemplates Principal seat and other places of sitting of High Courts for new States, which reads as under:

> *"51. Principal seat and other places of sitting of High Courts for new States.*
>
> > *(1) The principal seat of the High Court for a new State shall be at such place as the President may, by notified order, appoint.*
> >
> > *(2) The President may, after consultation with the Governor of a new State and the Chief Justice of the High Court for that State, by notified order, provide for the establishment of a permanent Bench or Benches of that High Court at one or more places within the State other than the principal seat of the High Court and for any matters connected therewith.*
> >
> > *(3) Notwithstanding anything contained in sub- section (1) or sub- section (2), the Judges and Division courts of the High*

Court for a new State may also sit at such other place or places in that State as the Chief Justice may, with the approval of the Governor, appoint."

31. Learned counsel would further contend that as per Section 17 of the Mysore High Court Act-1884, the High Court shall hold its sittings at such place as the State Government may, from time to time, appoint in that behalf and whenever it appears to the State Government convenient that the jurisdiction and powers vested in the High Court by this Act, or any other law for the time being in force, should be exercised in any place other than the place appointed under paragraph-1 of this section, or at several of other places by way of circuit, the State Government may by order authorise and direct any one or more of the Judges of such Court to hold sittings in such place or places as by such order may be directed, and the Judge or same Judges acting under such order shall have and exercise the jurisdiction and authority as would be had and exercised by a Judge or Judges of the High Court, as the case may be, in its ordinary place of sitting. He would contend that while enacting

the Karnataka High Court Act, 1961, under Section 14 of the said Act, the provisions of Sections 11 to 16, 16A, 16B, 20 and 22 of the Mysore High Court Act, 1884 (Mysore Act I of 1884) were repealed, but Section 17 of the Mysore High Court Act has not been repealed, thereby, the High Court of Karnataka has no power to set up permanent Benches at Dharwad and Kalaburagi. He would further contend that the provisions of Section 51(2) and (3) of the S.R. Act, 1956 are not applicable to the formation of Benches at Dharwad and Kalaburagi. He also contended that Sections 49 to 69 of the S.R. Act, 1956 come within Part V, which relate to High Courts. He would further contend that certain words in Entry-3, List-II of Seventh Schedule were omitted by the Constitution (Forty-second Amendment) Act, 1976 with effect from 03/01/1977. Entry 11A of List III of Seventh Schedule relates to "Administration of Justice; constitution and organisation of all Courts, except the Supreme Court and the High Courts". He would further contend that Annexure – "E" dated 19/10/2004 issued in exercise of powers under Section 51(3) of the S.R. Act, 1956 notifying sittings of Judges and Division Courts of the High Court of Karnataka at

Dharwad and Gulbarga, is invalid. He also draws the attention of the Court to the notification dated 4.6.2008 (Annexure-F), wherein it is stated that in exercise of the powers under Section 51(3) of the S.R. Act, the Hon'ble Chief Justice vide notification dated 19.10.2004 was pleased to notify sittings of Judges and Division Courts of the High Court of Karnataka at Dharwad and Gulbarga and the Full Court of the High Court vide resolution dated 3.6.2008 has resolved to commence sitting of Judges and Division Courts at the Circuit Benches at Dharwad and Gulbarga with effect from 07/07/2008. He would further contend that the President of India in exercise of the powers under Section 51(2) of the S.R. Act, 1956 issued a formal order as per Annexure-M for establishment of permanent benches of High Court of Karnataka at Dharwad and Gulbarga, thereby the Dharwad Bench would become functional as Permanent Bench from 24.8.2013 and that Gulbarga Bench from 31.8.2013. He would further contend that Clauses 4 and 5 of the Notification dated 08/08/2013 (Annexure-M) delegates the powers to the Chief Justice to nominate Judges of the High Court of Karnataka to sit at Dharwad and Kalaburagi Benches. Clause 5 of the said

notification prescribes that notwithstanding anything in sub-paragraph (i) and (ii) of paragraph 4 of the said notification, the Chief Justice of the High Court of Karnataka may in his discretion, order that any case or class of cases arising in any such District shall be heard at Bengaluru. He would further contend that in view of Article 214 of the Constitution of India and report of the Hon'ble Mr.Justice Jaswant Singh Commission dated 30/04/1985, the very establishment of circuit Benches at Dharwad and Kalaburagi and later converting them into permanent Benches, is contrary to law.

32. Learned counsel for the petitioner filed the list of dates and particulars/events and contended that the issuance of Annexure-P and Annexure-N, which relate to establishment of Circuit Benches at Dharwad and Gulbarga and later converting them to Permanent Benches in 2013, is patently contrary to law as the Karnataka High Court Act, 1961 does not contemplate the creation and establishment of circuit benches or permanent benches by invoking the provisions of Sections 51(3) and 51(2) of the S.R. Act, 1956. He would further contend that the S.R.

Act, 1956 was a Temporary or Transitional enactment for creation of the new States and once the new States were created in terms of the S.R. Act,1956 the organs of the State such as Legislature, Executive and the Judiciary came into existence and the said organs became functional and hence it was upto the new State to lay down its policies in respect of Administration of justice and formation of Benches, if any, for the High Court, by making appropriate provisions for the Administration of Justice in the State of Mysore (now Karnataka). Under Section 7 of the S.R. Act,1956 the State of Mysore, a new State came into existence on 1.11.1956. Thereafter, the first elections to the Legislative Assembly and Legislative Council of the State Legislature took place in 1957 and thereupon the Government/Executive was formed. The Judiciary started functioning as High Court of Mysore at Bangalore in place of the Chief Court of Mysore since 1.11.1956. It is further contended that in terms of the S.R. Act as the Principal Bench was established at Bangalore and started functioning since 1.11.1956 for the State of Mysore, which was continued in terms of Article 214 of the Constitution of India and

as there was only one provision pertaining to establishment of circuit benches was made in terms of Section-14 of Mysore High Court Act, 1961 by retaining the provision of Section 17 of the Mysore High Court Act, 1961, which was not repealed which contemplated that State Government was empowered to establish Circuit Benches. There was no provision for establishment of Permanent Benches as the Legislature in its wisdom thought it was not necessary. Hence, the establishment of circuit benches and permanent benches by invoking the provisions of Sections 51(3) and 51(2) of the S.R. Act in terms of Annexures E and M was ex facie contrary to law muchless contrary to S.R. Act.

33. Sri V.R. Datar would further contend that the report of the Committee of Hon'ble Judges headed by Hon'ble Sri Justice Ashok Bhan dated 05/06/2000 clearly depicts that establishment of the Circuit Benches at Dharwad and Gulbarga, was not feasible. The same was confirmed by the Hon'ble Supreme Court in the case of ***Federation of Bar Association in Karnataka -vs- Union of India*** reported in (2000)6 SCC 715

(Paragraphs 4,5,6 to 10). He also referred to the report dated 6.6.2003 (Annexure-D) submitted by majority of five Hon'ble Judges of this Court so also note of dissent dated 6.6.2003. Learned counsel brought to the notice of the Court Annexure-M dated 8.8.2013 passed by the President of India, in exercise of the powers under the provisions of Section 51(2) of the S.R. Act so also statement of objects and reasons of the said Act. He also brought to the notice of the Court Section 69 of the S.R. Act, 1956 which prescribes that "*nothing in this Part shall affect the application to the High Court for a new State of any provisions of the Constitution, and this Part shall have effect subject to any provision that may be made on or after the appointed day with respect to that High Court by any Legislature or authority having power to make such provision*", thereby S.R. Act, 1956 could not have been invoked. In view of the provisions of Section 14 of the Karnataka High Court Act, Sections 17, 18, 19, 21 and 23 of the Mysore High Court Act, 1894 have not been repealed. He further contended that in view of the provisions of Article 246(3) of the Constitution of India and Entry 3 of List II of Seventh Schedule of the

Constitution, the very constitution of permanent Benches of the High Court is void, ab initio and invalid. Section 28 of the S.R. Act, 1956 contemplates changes in composition and allocation of sitting members (Legislative Assembly). He would further contend that vide Annexure-N dated 15.4.2010, the then Hon'ble Chief Justice of this Court made a reference to the Law Minister of India requesting for enhancement of strength of permanent Judges and Annexure-P dated 24.8.2009 is the letter from the Chief Minister to Law Minister of India and vide Annexure-Q dated 15.4.2010, the Governor has given consent to the proposal of the Hon'ble Chief Justice and communicated the same to the Law Minister of India. He would further contend that in view of the provisions of Section 51(2) of the S.R. Act-1956, Part V of the said Act is not applicable for the constitution of the permanent Benches, as it is only temporary and transitional provision. Once the Karnataka High Court Act, 1961 came into force, the provisions of the S.R. Act, 1956 are not applicable. The law declared by the Hon'ble Supreme Court in (2000)6 SCC 716 (paragraphs 11 and 12) is binding on the

Court as well as the respondents. Therefore, learned counsel sought for allowing the writ petition.

34. In support of his contentions, learned counsel for the petitioner relied upon the following judgments:

1. Federation of BAR Associations in Karnataka vs. Union of India - (2000) 6 SCC 715 (para 11 and 12)
2. Kantaru Rajeearu Vs. Indian Young Lawyers Association- (2020) 2 SCC 1 (para 52 and 60)
3. State of Karnataka Vs. K.T. Rajashekar - 2020 (4) KCCR 2634 (DB) .. (para 16)
4. S.R. Bhagwat vs. State of Mysore - AIR 1996 SC 188 .. (para 11 and 12)
5. Union of India Vs. K.M. Shankarappa - (2001) 1 SCC 582 (para 7 and 8)
6. Report of the Law Commission for India (para 9 and 10)
7. 14th Report of Law Commission of India (para 81 and 82)
8. South India Corporation (P) Ltd., Vs. Secretary Board of Revenue - AIR 1964 SC 207 (para 13, 15, 18 and 19)

9. Petroleum and Natural Gas Regulatory Authority Vs. Indraprastha Gas Ltd., -AIR 2015 SC 2978 (para 18, 19 and 23)
10. Municipal Corporation of Pune vs. Bharat Forge Co. Ltd., - AIR 1996 SC 2856 ..(para 31 to 34)
11. State of M.P. Vs. Bhopal Sugar Industries - AIR 1964 SC 1179.. (para 6 and 7)
12. State of Maharahstra vs. Narayan S Puranik - AIR 1983 SC 46 .. (para 27)
13. Municipal Corporation for city of Pune and another .vs. Bharat Forge Co., Ltd and others - AIR 1996 SC 2856 (Paras 31 to 34)
14. Smt. Swaran Lata vs. Union of India and others - (1979) 3 SCC 165 (para 37 to 41)
15. Shri Swamiji of Shri Admar Mutt vs The Commissioner - AIR 1980 SC 1 (para 23, 24 and 29)
16. Moor and General Traders vs. state of A.P. and others -AIR 1984 SC 121(1) (para 16 and 17)
17. Babu Verghese and Others vs. Bar Council of Kerala - AIR 1999 SC 1281.. (para 31)
18. Bhavnagar University vs Palitana Sugar Mills (P) Ltd., - (2003) 2 SCC 111 ..(para 40)
19. A.L. Kalra vs. The Project and Equipment Corporation of India AIR 1984 SC 1361 (para 18)

20. Union of India vs. Sankalchand Sheth- AiR 1977 SC 2328 (para 102)
21. B.V. Narayana Reddy and others .vs. State of Karnataka - AIR 1985 Kar 99 (para 34)
22. M.I.Builders Pvt. Ltd., vs. Radhey Shyam Sahu and others - AIR 1999 SC 2468 .. (para 82)
23. Tirupati Balaji Developers Pvt. Ltd., vs. state of Bihar -(2004) 5 SCC 1 (para 21 and 24)

VI. Arguments advanced by Sri Shanti Bhushan, learned Deputy Solicitor General of India for Respondent No.1

35. Per contra, Sri H. Shanthi Bhushan, learned Deputy solicitor General of India for Respondent No.1 while reiterating the averments made in the statement of objections would contend that the very writ petition filed by the petitioner is not in the public interest and rather it is in the personal interest and the same is liable to be dismissed. He would contend that there is no infringement of any fundamental right nor any scope for enforcement of fundamental rights in the writ petition and all the Courts exist for convenience of litigants and not for the Lawyers. Adjudicating the present writ petition would only be an academic exercise. The establishment of the Courts should

not be construed as an investment, but to help the litigants and there is absolute absence of profit motive, but it is for welfare of the society. Creation of Benches would be beneficial for the litigants. He would further contend that much water has flown under the bridge and intervening in this matter at this stage would only be futile exercise. In view of Part IV of the Constitution of India, Directive Principles of State Policy cannot be challenged. Article-38 contemplates State to secure a social order for the promotion of welfare of the people and Article 39A contemplates equal justice and free legal aid. He would further contend that justice delivery to door step is the objective of the State. In the present case, no circumstances are brought to the notice of this Court by the petitioner and the establishment of circuit Benches at Dharwd and Gulbarga, cannot be termed as arbitrary, whimsical, unreasonable and contrary to any statutory provisions resulting in illegality. He would further contend that the Government has been conferred with power to be exercised as a part of duty towards the public and every power of this nature is, therefore coupled with a duty, which is to be performed in public interest.

36. Learned Deputy Solicitor General of India brought to our notice Government of India - Law Commission of India Report No.230 with regard to some suggestions to reforms in the Judiciary relating to 'Justice at easy reach' and 'Access to justice' and the recommendation made by the Law Commission of India. He also relied upon the judgment of Constitution Bench of the Hon'ble Supreme Court in the case of ***Anita Kushwaha -vs- Pushap Sudan*** in Transfer Petition (C) No.1343 of 2008 dated 19th July 2016, wherein it is held at paragraph-30 that four main facets that constitute the essence of access to justice are:

i) The State must provide an effective adjudicatory mechanism;

ii) The mechanism so provided must be reasonably accessible in terms of distance;

iii) The process of adjudication must be speedy; and

iv) The litigants access to the adjudicatory process must be affordable.

37. Lastly, Sri Shanthi Bhushan contended that Dharwad and Kalaburagi Benches were established in the year 2008 and now we are in the year 2023 and more than 14 years has

elapsed and the petitioner has not made out any case to grant relief at this belated stage, keeping in view the interest of the citizens of the districts coming under the jurisdiction of the Dharwad and Kalaburagi Benches, staff appointed, number of cases disposed off, money spent for establishment etc., Therefore, he sought to dismiss the writ petition.

38. In support of his contentions, learned Deputy Solicitor General of India has relied upon the following judgments:

1. Judgment of High Court of Judicature at Madras in Writ Petition No.2402 of 2002 dated 26.2.2002. (paras 24 and 25)
2. Federation of BAR Associations in Karnataka vs. Union of India - (2000)6 SCC 715 .. (paragraphs 6 and 7)
3. State of Maharashtra vs. Narayan Shamrao Puranik and others - (1982)3 SCC 519 with regard to establishment of Aurangabad Bench (paras 12, 13, 15, 21, 25 and 26)

VII. Arguments advanced by learned senior counsel for Respondents 2 and 3

39. Sri Naganand, learned senior counsel along with Sri S.G. Prashanth Murthy, learned counsel for Respondent Nos.2

and 3 would contend that originally Mysore High Court Act, 1884 was in force. The preamble of the said Act reads as under:

> "Whereas it is expedient to amend the Constitution of *and to provide for the administration of justice by* (inserted by Act XXXV of 1951) the High Court of Mysore; His Highness the Maharaja of Mysore is pleased to enact as follows:

40. Learned senior counsel also referred to the provisions of Section -17 of the Mysore High Court Act, 1884 relating to place of sitting of High Court, which reads as under:

> *"**17. Place of sitting of High Court :-** The High Court shall hold its sittings at such place as the 1[State Government] may, from time to time, appoint in that behalf.*
>
> *Whenever it appears to the 1[State Government] convenient that the jurisdiction and powers vested in the High Court by this Act, or any other law for the time being in force, should be exercised in any place other than the place appointed under paragraph 1 of this section, or at several of other places by way of circuit, the 1[State Government] may by order authorise and direct any one or more of the Judges of such Court to hold*

sittings in such place or places as by such order may be directed, and the Judge or same Judges acting under such order shall have and exercise the jurisdiction and authority as would be had and exercised by a Judge or Judges of the High Court, as the case may be, in its ordinary place of sitting.

1. Substituted by Act No. 1 of 1956"

41. Learned senior counsel also brought to the notice of the Court Entries - 78 and 79 of List I - Union List of Seventh Schedule (Article 246) of the Constitution of India, which reads as under:

"78. Constitution and organisation including vacations of the High Courts except provisions as to officers and servants of High court; persons entitled to practise before the High Courts.

79. Extension of the jurisdiction of a High Court to, and exclusion of the jurisdiction of a High Court from, any Union Territory."

42. Learned senior counsel would further contend that before the amendment by Constitution (Forty-Second Amendment) Act, 1976 w.e.f. 3.1.1977, Entry-3 of List II of Seventh Schedule of the Constitution of India contemplates the

words, *"Administration of justice; constitution and organistion of all courts, except the Supreme Court and the High Courts".* Thereby, the said words were existing in the Entry-3 of List-II as on the date of enactment of the Karnataka High Court Act, 1961. Now, the same words are introduced in verbatim in Entry-11A of List III w.e.f. 3.1.1977.

43. Learned senior counsel would further contend that what was questioned before the Hon'ble Supreme Court was the report submitted by the Committee of five Judges, constituted by the Chief Justice of Karnataka High Court, under Article 32 of the Constitution of India and not the final decision of the President of India in the case of ***Federation Of Bar Associations in Karnataka -vs- Union Of India*** *reported in (2000)6 SCC 715 - (paragraphs-2, 8, 9 and 11),* wherein it is held that the question of establishment of a Bench of High Court away from the principal seat of the High Court is not to be decided on emotional or sentimental or parochial considerations. 'The High Court is the best suited machinery to decide whether it is necessary and feasible to have a bench outside the principal seat of that High Court.' If the High Court does not favour such

establishment it is pernicious to dissect a High Court into different regions on the ground of political or other considerations. So it is out of question to decide for establishment of a bench outside the principal seat of a High Court contrary to the opinion of the Chief Justice of that High Court which has been formed after considering the views of the colleague Judges. He would further contend that petitioner has not made out any case on merits and the writ petition was dismissed by the Hon'ble Supreme Court as the Committee of Judges constituted by the Chief Justice of the High Court has come to the conclusion that establishment of a bench of the High Court away from Bangalore is not advisable, thereby the judgment in the case of ***Federation of Bar Association in Karnataka -vs- Union of India*** reported in (2000)6 SCC 715 is based on the committee report and not on any final decision taken by the jurisdictional authorities and therefore, the present writ petition is liable to be dismissed with costs.

44. The learned Senior Counsel would further contend that in view of the provisions of Section 51(2) and (3) of the

S.R.Act, 1956, the Hon'ble Supreme Court in the case of **State of Maharashtra -vs- Narayan Shamrao Puranik and Others** *reported in (1982) 3 SCC 519 (paragraphs 11, 14,15,16, 17 and 18)* has held that the power may be exercised from time to time when occasion arises unless a contrary intention appears is well settled. A statute can be abrogated only by express or implied repeal. It cannot fall into desuetude or become inoperative through obsolescence or by lapse of time. The Judges and Division Courts at a temporary Bench established under Sub-section (3) of Section 51 of the Act function as Judges and Division Courts of the High Court at the Principal seat and while so sitting at such a temporary Bench they may exercise the jurisdiction and power of the High Court itself in relation to all the matters entrusted to them.

45. Learned senior counsel would further contend that the recommendation of a Committee consisting of seven Hon'ble Judges was approved by the Hon'ble Supreme Court and final decision was taken by the President of India on the basis of the material on record. The scope of writ petition/judicial review is

very limited. In support of his contentions, the learned Senior Counsel placed reliance on the dictum of the Hon'ble Supreme Court in the case of **Union of India -vs- Kaii Dass Batish** *reported in (2006)1 SCC 779, particularly paragraph-14*.

46. The learned Senior Counsel further contended that the Courts are meant for a general public at large and not for lawyers or judges. No litigant is before this Court except the lawyer, who has filed the present writ petition in the nature of Public Interest Litigation and even other single Lawyer in the entire State supported the case of the petitioner.

47. The learned Senior Counsel relying upon the provisions of Section 69 of the S.R. Act, 1956 contended that the petitioner cannot seek to enforce a provision of a Pre-Independence Legislation viz., Section 17 of the Mysore High Court Act, 1884 and seek to confer power on the State Government whose legislative competence in relation to the matters of High Courts are expressly denuded in the aforesaid provisions of the Constitution. The said submission is fortified by Article 372 of the Constitution which provides for the

continuance of the laws and their adaptation that were in force prior to the commencement of the Constitution. However, the continuation of the existing laws was made subject to the other provisions of the Constitution. Therefore, Section 17 of the Mysore High Court Act, 1884 being repugnant to Entries 78 and 79 of List I of Seventh Schedule, is unenforceable. In support of his contention, he relied upon the judgments of the Hon'ble Supreme Court in the case of ***John Vallamattom and Another -vs- Union of India reported in (2003)6 SCC 611 (paragraph-18) and Union of India -vs- City Municipal Council reported in (1979) 2 SCC 1 (para-8)***.

48. The learned senior counsel would further contend that paragraphs-4(a) and (b) of the Jaswanth Singh Committee report are not applicable to the provisions of the Mysore High Court Act, 1884. He would contend that the Constitution and Organisation of the High Courts, extension of the jurisdiction to and exclusion of the jurisdiction of the High Court, from any Union Territory are the subject matters for framing of laws under Article 246 of the Constitution by the Parliament in as much as

the same would fall within the ambit of Entry 78 and Entry 79 in List I (Union List) of Seventh Schedule appended to the Constitution of India. Therefore, the S.R. Act, 1956 legislated by the Parliament and the exercise of power therein under Section 51(2) and 51(3) of the said Act, cannot be found fault with. In support of his contentions, he relied upon the judgment in the case of ***Abdul Taiyab Abbas Bhai Malik and Others -vs- The Union of India and Others reported in AIR 1977 MP 116***,

49. He would further contend that the impugned annexures have been issued by the authorities who have jurisdiction to do so and Section 17 of the Mysore High Court Act, 1884 envisages that the place of sitting of the High Court is as notified by the State Government from time to time.

50. He contended that even assuming that the provisions of the S.R. Act, 1956 are not applicable, the fact that the State Government was involved in the deliberation and consultation process for creating benches at Dharwad and Gulbarga would reflect the compliance of Section 17 of the Mysore High Court Act, 1884.

51. Learned senior counsel further contended that 'access to justice is a fundamental right under Article 21 of the Constitution of India.' Therefore, it is incumbent upon the State including the Judiciary to ensure that the justice delivery system reaches out to every nook and corner of the territory. This also means that the State should provide enhanced capability and adequate infrastructure for the functioning of the Courts to enable the ease of access to justice to every citizen. In support of his contentions, he relied upon the judgment of the Hon'ble supreme Court in the case of ***All India Judges Assn. -vs- Union of India*** reported in (2018)17 SCC 555 (paragraphs 6,7, 9 and 10).

VIII - ARGUMENTS ADVANCED BY LEARNED ADDITIONAL ADVOCATE GENERAL FOR RESPONDENT NO.4/ STATE GOVERNMENT:

52. Sri Dhyan Chinnappa, learned Additional Advocate General along with Sri Kiran Kumar, learned High Court Government Pleader, for State submits that the present Public Interest Litigation is filed in the year 2014 and now i.e., after lapse of 14 years, the relief sought for is a futile exercise and is

liable to be dismissed. He further contended that this Court while dealing with the process of proceedings, the constitution bench at Dharwad and Kalaburagi, the public interest litigation is not maintainable. He further contended that ***Federation of Bar Association*** case relied upon by the petitioner, was a case based only on the report and not on the constitution of bench. The said case has no consequence, after States Reorganisation Act, 1956 came into force and after taking decision in the matter, in detail. He further contended that the petitioner is a practicing advocate and, none of the District Bar Associations within the jurisdiction of Dharwad and Kalaburagi Benches have supported the case of the petitioner and there is no public interest involved and thereby the writ petition is liable to be dismissed. He further contended that the Courts are meant for general public at large who come to the Court with great expectations for the relief sought for and not meant either for the advocates or the Judges. Thereby, the petitioner has not made out any ground to exercise extraordinary writ jurisdiction under Article 226 of Constitution of India and therefore, sought to dismiss the writ petition. In support of his contentions,

learned Additional Advocate General relied upon the dictum of the Hon'ble Supreme Court in the case of ***State of Maharashtra vs. Narayan Shamrao Puranik and others*** reported in ***(1982) 3 SCC 519***, paragraphs 11, 15, 16 and 25. He further contended that the entry 77 and 78 List I Seventh schedule, entry 95 List I Seventh schedule, entry 65 List II Seventh schedule, entry 46 List III Seventh schedule and entry 11A List III Seventh schedule of the Constitution of India provides for establishment of Benches of High Court for convenience of litigant public. He further contended that Section 64 of the States Reorganization Act is meant only for practice and procedure, and Section 17 of Mysuru Act is nullity in the eye of law. Thereby, petitioner has not made out any case to grant the relief sought for and therefore, sought to dismiss the writ petition.

IX- ARGUMENTS ADVANCED BY LEARNED COUNSEL FOR RESPONDENT NO.6/KALABURAGI BAR ASSOCIATION:

53. Sri Karthik Yadav, learned counsel for Sri S.K.Venkata Reddy, learned counsel for respondent No.6, while adopting the arguments advanced by Sri S.S.Naganand, learned

Senior Counsel for respondent Nos.2 and 3 and, Sri Dhyan Chinnappa, learned Additional Advocate General for respondent No.4, would contend that the provisions of Section 14 of the General Clauses Act, 1897 and Sections 2 and 3 of States Reorganisation Act, 1956, has to be exercised from time to time as and when occasion arises. He further contended that in similar circumstances two advocates filed two separate writ petitions before High Court of Judicature, Madras, in W.P.Nos.2402/2002 and 3333/2002 which came to be dismissed. Against the said Order Writ Appeal No.926/2002 came to filed which was also dismissed by the Division Bench of the Madras High Court on 11.03.2004, wherein, at paragraphs 6, 7, 20 and 21, it is specifically held as under:

> *"**6.** Learned single Judge then held that the Madras High Court would also be covered by the State Reorganisation Act, 1956 since Madras was also a State, which was a subject-matter of the State Reorganisation Act, 1956 in terms of Sec. 4 in Part II of the said Act. Quoting Sec. 4 of the said Act, it was pointed out that some territory from the erstwhile State of Madras while some others, which were not part of the Madras State, were added. The learned*

Judge, therefore, held that the State of Madras was a 'new State' within the meaning of State Reorganisation Act and, therefore, there was always a power available to the Chief Justice under Sec. 51(3) of the State Reorganisation Act and that the permanent Benches could also be set up under Sec. 51(2) of the said Act. On these reasons, the learned single Judge dismissed the writ petition, W.P. No. 2402 of 2002.

7. *In so far as the writ petition, W.P. No. 3333 of 2002 was concerned, the learned Judge refuted the arguments that under Art. 214 there could be only one High Court for each State and held that the Benches of the High Court are as much part of the main High Court. For this also, learned single Judge relied on the aforementioned decision in State of Maharashtra v. Narayanan (supra). Learned Judge then rejected the contention raised in that petition that the jurisdiction to deal with the High Court was a parliamentary power and in the absence of any parliamentary law or constitutional provision, no such decision can be taken. For this, learned Judge relied on Arts. 225 and 372 and the Letters Patent. Lastly, the learned single Judge also refuted the contention that Clause 31 of the Letters Patent could not be invoked because of the unamended language*

of the said Letters Patent. It was pointed out that by Adaptation Order, 1937 and 1950, the provisions would have to be read and the suitable changes would have to be deemed to be there in the Letters Patent. Before parting, learned Judge ultimately noted that tremendous expenditure had already been made in creating the infrastructure for the Madurai Bench and that the subject of creation of a High Court Bench at Madurai was in the vogue for the last thirty years. Learned Judge ultimately came to the conclusion that the petitioner could not plead ignorance of the developments regarding the creation of Bench at Madurai and the writ petition was liable to be dismissed in limine on the ground of laches. The learned Judge, therefore, dismissed the writ petition, W.P. No. 3333 of 2002.

20. *Shri Vijayan, however, took great exception to the factual statement made by Shri V.T. Gopalan in which the learned Additional Solicitor General also referred to Sec. 51(2) of the State Reorganisation Act and wanted to contend that such a decision could not be possible in view of the fact that the State of Tamil Nadu was not a 'new State' and that the power under Sec. 51(2) of the States Reorganisation Act could be implemented only in respect of the 'New State'. We have already explained that the learned*

single Judge has already held that the words 'State of Tamil Nadu' (the then Madras State) referred to in Sec. 4 under Part II of the States Reorganisation Act can be deemed to be a 'new State' and the inference of the learned single Judge and the consequential dismissal of the writ petition, W.P. No. 2402 of 2002, where this question was raised has remained unchallenged. We would, therefore, leave the question at that. Further, in our opinion, it would now be futile to go into that question as the procedural aspect of creation of the Bench of the Madras High Court at Madurai is inextricably connected with the basic question as to whether there should be a Bench at all at Madurai or not. We have already pointed out that this basic issue and the decision therefor could have been challenged only at the proper time. The petitioner chose to keep silent at the material time and has chosen to woke up now after crores of rupees have been spent and is trying to raise the procedural objections only to thwart the basic objective of creation of the Bench at Madurai, which is not permissible. We have no doubts in our minds that the Central Government would take proper steps in law procedurally by taking recourse to proper legal procedure. In any event, by a mere procedural challenge, petitioner

could not be permitted to achieve a wider objective of thwarting the Bench at Madurai at all more particularly at this juncture in the year 2004 when the first decision was taken in the year 1995 and was ratified in the year 2000 after a firm decision was taken in that behalf by the Central Government and further when crores of rupees are spent in creating infrastructure.

21. *It must be borne in mind that the High Court, in exercise of its' powers, cannot ask the Legislature to legislate or to legislate in a particular manner. So also, the High Court shall not ask the Legislature not to legislate or to legislate in a particular manner. How a particuiar objective is to be carried out or realised has to be left to the wisdom of the Legislature altogether and we have no doubts that the objective of bringing about the Bench of the Madras High Court at Madurai shall so obtained. We, therefore, agree with the learned single Judge. The judgment of the learned single Judge, dismissing the writ petition, W.P. No. 3333 of 2002 and dismiss this appeal. No other point were argued excepting those referred to above."*

Therefore, learned counsel sought to dismiss the writ petition.

54. Smt.Sona Vakkund, learned counsel appearing for Dharwad Bar Association adopted the arguments advanced by the learned counsel for the Central Government, State as well as the High Court.

X - POINTS FOR DETERMINATION

55. In view of the aforesaid rival contentions urged by learned counsel for parties the points that would arise for our consideration in the present writ petition are:

> "(i) Whether the petitioner has made out a case any public interest to quash the notification dated 19.10.2004 vide annexure-E, whereunder, Hon'ble the Chief Justice, High Court of Karnataka, in exercise of powers under Section 51(3) of the State Reorganisation Act, 1956 with the approval of His Excellency the Governor of Karnataka, notified the sitting of Judges and Division Courts of the High Court of Karnataka at Dharwad and Gulbarga; notification dated 04.06.2008 vide Annexure-F, whereunder, it was notified that the cases arising from the Districts of Bagalkot, Bellary, Belgaum, Dharwad, Gadag, Haveri, Uttara Kannada-

Karwar and Koppal will be heard and decided at Circuit Bench at Dharwad, and, case arising from the Districts of Bidar, Bijapur, Gulbarga and Raichur, will be heard and decided at the Circuit Bench at Gulbarga, and that sitting of Judges and Division Courts at Circuit Benches at Dharwad and Gulbarga will commence on 07.07.2008 and that the pending cases from the respective districts coming within the jurisdiction of the aforesaid two Circuit Benches will be transferred to respective circuit benches before 07.07.2008 and filing of new cases at circuit benches will be permitted from 07.07.2008; and The High Court of Karnataka (Establishment of Permanent Benches at Dharwad and Gulbarga) Order, 2013, dated 08.08.2013, vide Annexure-M, whereunder, the President of India, in exercise of powers conferred by sub Section (2) of Section 51 of the States Reorganisation Act, 1956 (37 of 1956), in consultation with the Governor of Karnataka and Chief Justice of the High Court of Karnataka, passed the Order to the effect that the permanent Bench of the High Court of Karnataka at Dharwad shall come into operation on 24.08.2013 and the permanent

Bench of the High Court of Karnataka at Gulbarga shall come into operation on 31.08.2013?

(ii) Whether the petitioner has made out any case for issuance of a writ of mandamus to the 5th respondent to conduct performance audit including financial audit regarding the investment, expenditure and functional viability of Benches at Dharwad and Gulbarga, in exercise of extraordinary writ jurisdiction under Article 226 of Constitution of India?"

XI - CONSIDERATION

56. We have given our thoughtful consideration to the arguments advanced by learned counsel for the parties and perused the entire material including original records, carefully.

57. The substance of present Public Interest Litigation filed by the petitioner who is a practicing advocate is, challenge to the notification dated 19.10.2004 vide annexure-E, notification dated 04.06.2008 vide Annexure-F, and Order dated 08.08.2013, vide Annexure-M, mainly on the ground that the establishment of benches at Dharwad and Gulbarga was

inadvisable in view of the dictum of the Hon'ble Supreme Court in the case of ***Federation of Bar Association in Karnataka vs Union of India*** reported in ***(2000)6 SCC 715,*** on the ground that, an executive act cannot over write judicial decision and that, in view of Article 214 of the Constitution of India only one seat at principal seat is provided and the establishment of circuit benches is in Violation of Sections 51 and 69 of the States Reorganisation Act and contrary to the provisions of Mysuru High Court Act, 1884 and against Jaswant Singh Commission report, and converting circuit benches into permanent benches by the High Court before reviewing the performance of the benches regarding functional viability, financial sustainability without effecting the audit by the 5th respondent, as huge public money is involved and thereby in the interest of public at large, it is incumbent to quash the notifications sought for in the writ petition.

58. The petitioner relied upon the report of Jaswant Singh Commission report dated 30.04.1985 addressed to Union Law Minister, wherein, it is stated that, although the members of

the Commission were able to examine and report on the demands for establishment of permanent Benches of High Courts of Madras and Madhya Pradesh besides Allahabad, they have not found it practicable to complete the work in relation to Karnataka and North Eastern States by the date set up by the Government vide Ministry letter No.46/2/81-Jus, dated 04.04.1985 for the reasons mentioned in the said letter. It is further stated that, before embarking on the task assigned to it in regard to the State of Karnataka, the Commission had a preliminary round of talks with the Chief Minister of the State. During the course of said task, the Chief Minister detailed before the Commission the grounds, on the basis whereof the State Government considered it necessary to have a Bench of the High Court for the two Revenue Divisions of Belgaum and Gulbarga and the district of Shimoga and its location at Dharwad. Thereafter, the Commission met the Chief Justice and his companion judges, all of whom appeared to be opposed to the establishment of a Bench of the High Court of the State at any place away from its Principal seat.

59. Subsequently, a demand for establishment of separate bench of High Court in north Karnataka has often been raised in last decades with regular intervals. The Mysuru State now called 'Karnataka' was formed after reorganization of five regions, viz.,

(a) Erstwhile Mysuru State

(b) Bombay Karnataka Area

(c) Hyderabard Karnataka Area

(d) Madras-Karnataka

(e) Erstwhile hilly region of Coorg.

The plea of a circuit bench or a permanent Bench at Dharwad-Hubli and Gulbarga was being raised mainly on the ground of inconvenience/expense caused to the litigant public because of the distance from those areas to Bengaluru. It did not find favour with successive Chief Justices. In the year 1999 the issue was raked up afresh followed by hunger strike resorted to by the President of Dharwad Bar Association and certain advocates. Their demand was that a permanent bench of High Court be established at Hubli. Demand for benches at Belgaum,

Gulbarga, Bellary and Bidar were also made at the same time. Pursuant to the representations of the members of Dharwad District Bar Association dated 23.03.1999, the then Chief Justice constituted a committee of five Judges to consider the memorandum submitted for establishing a Bench of the High Court at Hubli-Dharwad. The Committee, in its meeting dated 29.07.1999, resolved to invite President, Secretary and representatives of the District Bar Association who made representations for the establishment of the Bench of the High Court at their respective District Head Quarters. The Committee heard the President, Secretary and representatives of the Bar Association of Hubli-Dharwad on 25.08.1999, of Belgaum on 18.09.1999, of Bijapur on 08.10.1999, of Gulbarga, Bidar and Yadgir on 03.12.1999 and of Bellary on 13.12.1999.

60. Considering the demand for Bench of the High Court at a place away from principal seat, in the last 30 years, on nine occasions, the said question has been considered i.e., on 20.05.1969, 24.08.1973, 25.03.1975, 29.10.1979, 17.07.1990, 01.04.1991, 30.10.1991, 12.08.1993 and 29.11.1994. Except

for once, i.e., on 29.10.1979, on all other occasions, the representations for creating the Bench of the High Court at a place away of principal seat was rejected. In the year 1979, the then Chief Justice was in favour of establishment of bench at Dharwad subject to the condition that State Government undertakes to construct a suitable building for the High Court. It was stated that, unless all amenities were provided, the then Chief Justice opposed for establishment of Bench at Dharwad. The committee also considered Jaswant Singh committee report and observed that there are 27 revenue districts in the State of Karnataka including 7 new districts created in the year 1998. However, so far as the sessions divisions are concerned, there are only 20 divisions and, District Courts in the newly established District headquarters have not yet been established. The total area comprised in the State of Karnataka is 1,918 sq.kms and the population as per 1991 census is 4,49,77,000.. The northern districts of State of Karnataka are comprised in Belgaum and Gulbarga division. The pendency of cases on the file of the High Court arising out of the 8 districts i.e., Dharwad, Karwar, Bijapur, Belgaum, Bellary, Bidar, Gulbarga and Raichur,

is 30.42% as on 22.11.1997 and the same has come down to 20.11% as on 01.08.1999 and as on 01.01.2000, the percentage from these districts has further come down to 18.37%. The Committee headed by Justice Ashok Bhan and four other Hon'ble Judges also held that, the cost of travel is not a major part of the litigation. Court fees and lawyers fee constitute the bulk of expenditure. The presence of the parties at Bangalore would not be necessary for the purpose of institution, prosecuting or defending their cases in view of the new proposal to connect the mufassil courts within the High Court through computers connecting all the courts in vide area network in the State. There would be no hardship faced by the litigant public of northern Karnataka region at the principal seat of the High Court at Bangalore in instituting, prosecuting and defending their cases as the entire process of filing, scrutiny and the information regarding the status of the case is being computerised and there is also proposal to connect all the Courts in the State with the High Court through the computers. It was further opined that Bangalore Bar consists of advocates from all parts of the State and the facilities and connections which the members of the Bar

are having with the litigant public is not only adequate but the legal machinery is smoothly functioning. Where a State is a Federation of different areas or it comprises of different regions, such demands to crop up, but they lead to decentralization. The paramount consideration in deciding such demand should be the real and genuine need of the people for grant of a separate facility. Thereby, the Committee opined that the demand is neither real nor genuine and it is not for the benefit of litigant public. Thereby, the Committee was of the opinion that, none of the criteria laid down by Jaswant Singh commission report is satisfied for considering expediency and desirability of establishing a Bench away from principal seat of the High Court. The Committee was of the opinion that it is not necessary to have a Bench of the High Court of Karnataka at a place away from principal seat of the High Court, and thereby, the question of considering establishment of Bench at Hubali-Dharwad, Belgaum, Bijapur, Gulbarga and Bidar or any other place away from the principal seat of the High Court at Bangalore, does not arise.

61. Subsequently, in the year 2001, the President, Bar Association, Dharwad, made one more representation requesting the then Chief Justice to recommend for establishment of Bench at Hubli-Dharwad twin city, at the earliest. In view of the representations and subsequent developments, the then Chief Justice, by the notification dated 21.03.2002, constituted a Committee consisting of 07 Hon'ble Judges of this Court, to consider the question as to whether it is necessary to have a Bench of the High Court at a place other than its principal seat at Bangalore, and if necessary, to consider the situs of the Bench in one of the places in North Karnataka.

The aforesaid Committee consisting of 07 Hon'ble Judges met on 03.04.2002 and directed that the representations and suggestions of the people be called for. Accordingly, public notifications were issued in all leading newspapers inviting representations from all sections of the society having interest in the issue. Pursuant to the notification, 402 representations were received. The committee, on examination of representations, found it more advisable to visit the principal towns of the North

Karnataka districts and have a public hearing regarding the demand and its reasonableness. Accordingly, the Committee held public hearing at following places where audience was given to diverse sections of the public including representatives of bar association, trade and industry, public representatives like Ministers, MLAs, MPs, counseliors, women organisations, physically disabled persons, agriculturists, religious leaders and social activist groups. At every place, there was a tremendous public response with an unequivocal demand for having a Bench of the High Court in northern region of the State. The place and dates of visits were:

Sl. No.	Place	Date of visit	No. of representations submitted at the place
1	Gulbarga and Bidar	07.09.2002	114
2	Hubli-Dharwad	24.01.2003	821
3	Bijapur	15.03.2003	81
4	Bellary	16.03.2003	15
5	Belgaum	06.04.2003	239

The statistical data:

1. Geographical Area: The geographical area of the State of Karnataka is 1,91,791 sq.kms and the total area of district

comprised in North Karnataka is 98,621 sq.kms. Thus the total area of 12 northern districts from 51.42% of the total area of the State.

2. Demography: The total population of the Karnataka State, as per 2001 census is 5,27,33,958. The population of the 12 northern districts is 2,25,28,449 which is 42.71% of the total population of the State.

3. Litigational trend.

District Subordinate Courts: As on at the end of February, 2003, the following were the pendencies in the subordinate Courts in the State of Karnataka.

	Karnataka (27 districts)	North Karnataka (12 districts)
Civil	600,228	194,171
Criminal	397,357	86,471
Total	997,585	280,642

4. Per capita income and economic conditions: The reorganised State's average per capita income in 1956 was less than Rs.200/- and this rose to Rs.13,621/- by 1998 and to Rs.17,482/- in 2001. The various districts per capita income increased correspondingly and continuously.

However, the range of variation in district income is quite wide. In 1997-98, the per capita income in Bidar (one of the 12 northern districts in the State) was Rs.7,861/- whereas in Bengaluru Urban District it was Rs.25,740/-. It is noticeable that the northern region of the State is relatively more backward and economically downtrodden compared to southerners.

5. Distance: The distance between Bengaluru and major towns in the northern Karnataka area are as under.

Bangalore-Hubli	400 kms
Bangalore-Dharwad	426 kms
Bangalore-Belgaum	502 kms
Bangalore-Bijapur	579 kms
Bangalore-Gulbarga	613 kms
Bangalore-Bellary	304 kms
Bangalore-Bidar	669 kms
Bangalore-Raichur	415 kms

The Committee further recorded a finding that, Jaswant Singh Commission had broadly laid down 21 criteria for considering the desirability of establishment of the Bench of the High Court at a

place outside the principal seat. The above statistical data by and large satisfies all the criteria laid down by Jaswant Singh Committee. The pendency of cases from northern districts is almost one third of the total pendency of the High Court. The are (51.42%) and population (42.71%) of the demanding districts is much more than one fourth of the total area and population of the State. The journey from any place of the demanding districts to Bangalore will take much more than 8 to 10 hours. The filing of cases from these districts to the High Court is on the incline. The setting of the Bench at any place in northern Karnataka will certainly tend to their convenience and on ultimate analysis, it will substantially reduce the overall cost of litigation and inconvenience to the litigant public belonging to the area.

The High Powered Committee for Redressal of Regional Imbalances constituted by the Government of Karnataka, in its Final Report submitted in June 2002, has opined that 'more than some of the disparities in facilities, non-fulfillment of the long-time cherished desire of the people of North Karnataka to have a

Bench of the Karnataka High Court in their region has led to greater anguish and frustration." The Chief Minister of the State had made public statements regarding the need of a Bench of the High Court at Hubli-Dharwad which had been supported by all political parties irrespective of party affiliations. A statement to this effect was also made by the Chief Minister on the floor of the State Legislature. On February 28, 2003, while addressing the Joint Session of the Karnataka Legislature, the Governor of the State again reiterated the firm stand of the State Government favouring establishment of a High Court Bench at Hubli-Dharwad.

It can not be lost sight of that Jaswant Singh Committee was constituted to formulate the criteria for establishment of the permanent Benches of the High Court outside its Principal seat in the new states created under the states Reorganisation Act, 1956. By this time, in all the States so created, except the State of Karnataka, having regard to convenience of the litigants, such Benches have been established. Creation of benches has hardly posed any problem in administration of justice in such states. It

is of importance to note that Parliament itself has made an unambiguous provision in the States Reorganisation Act empowering the President of India to establish permanent Benches, if the situation so demands, after consultation with the State Government and the Chief Justice of the High Court. This power has to be necessarily exercised if the cause of imparting affordable and accessible justice to the people so demands. The legislative intendment cannot be set at naught on an apprehension that the establishment of permanent Benches outside the principal seat would impair the unity and integrity of the High Court.

Conclusion

Accordingly, the Committee opined that the Hon'ble Chief Justice may recommend for establishment of permanent Bench of the High Court on the location referred to above subject to the conditions that:

> *(1) Before notifying the establishment of the permanent Bench and making it functional, the State Government should create complete infrastructure*

by constructing buildings for housing the Bench, the Judges, staff, lawyers as also ensuring availability of adequate facilities for boarding and lodging of the litigants, to the full satisfaction of the High Court; and,

(2) State Government should also make appropriate arrangements for availability of water throughout the year for drinking and other purposes in the corporation area of Hubli-Dharwad. We are making this specific because there is a general complaint of acute shortage of water in Hubli-Dharwad which may cause great inconvenience to the litigant public and other functionaries of the court and may defeat the very purpose of establishing the Bench.

Before parting, we make it clear that under no circumstance, the request for establishment of a Bench in any temporary accommodation or on any adhoc arrangement should be conceded to because, according to us, any such adhoc arrangement may acquire a permanent character and the Bench may be required to continue functioning without their being appropriate infrastructure and facilities as indicated above.

Out of seven members of Justice G.C.Bharuka Committee, majority of the members i.e., five members supported establishment of circuit benches. However, two members who were the members of earlier Committee of Ashok Bhan, expressed that there is no need to have Benches of High Court of Karnataka at a place other than Bengaluru.

62. A careful perusal of the report of Jaswant Singh Commission dated 30.04.1985 depicts that the Commission at Chapter V enumerated the Broad Principles and Criteria to be followed in assessing the expediency and desirability of setting up a bench of the High Court away from the Principal Seat. The Commission met the Hon'ble Chief Justice and his companion Judges who opposed to establish the bench at any place other than principal seat, in the year 1985. When the Committee headed by Justice Ashok Bhan was constituted, the Committee, except considering representations of Bar Association, has not given audience to representatives of trade and industry, public representatives like Ministers, MLAs, MPs, counsellors, women organisations, physically disabled persons, agriculturists,

religious leaders and social activist groups and has not noted the distance from the Principal Seat, number of cases pending. The subsequent Committee submitted the report dated 06.06.2003, wherein, majority of the Committee members supported for establishment of Benches. However, two members of the Committee opposed for establishment of Bench at a place away from Principal Seat.

It is also not in dispute on the recommendation made by the Committee the Chief Secretary, Government of Karnataka, addressed a letter to Hon'ble the Chief Justice, High Court of Karnataka, informing that His Excellency the Governor of Karnataka has approved the proposal for establishment of benches at Dharwad and Gulbarga. Accordingly, Hon'ble the Chief Justice, by notification dated 19.10.2004, in exercise of powers under the provisions of Section 51(3) of the States Reorganization Act issued notification notifying the sittings of Judges and Division Courts of the High Court of Karnataka at Dharwad and Gulbarga. The notification specifically depicts that the date of sitting will be notified after getting satisfactory report

of the Hon'ble Committee (already constituted) by the Order of the Hon'ble Chief Justice, High Court of Karnataka. Subsequently, by notification dated 04.06.2008, Hon'ble Chief Justice permitted to commence sittings of Judges and division Courts at Dharwad and Gulbarga with effect from 07.07.2008.

63. The provisions of sub section (1), (2) and (3) of Section 51 of the States Reorganization Act, 1956, reads as under:

> 51. Principal seat and other places of sitting of High Courts for new States.--
>
> (1) The principal seat of the High Court for a new State shall be at such place as the President may, by notified order, appoint.
>
> (2) The President may, after consultation with the Governor of a new State and the Chief Justice of the High Court for that State, by notified order, provide for the establishment of a permanent bench or benches of that High Court at one or more places within the State other than the principal seat of the High Court and for any matters connected therewith.
>
> (3) Notwithstanding anything contained in sub-section (1) or sub-section (2), the Judges and division courts of the High Court for a new State may also sit at such other place or places in that State as the Chief Justice may, with the approval of the Governor, appoint.

By careful reading of the said provision makes it clear that, the principal seat of the High Court for a new State shall be at such place as the President may, by notified order, appoint. Further, the President may, after consultation with the Governor of a new State and the Chief Justice of the High Court for that State, by notified order, provide for the establishment of a permanent bench or benches of that High Court at one or more places within the State other than the principal seat of the High Court and for any matters connected therewith. Notwithstanding anything contained in sub-section (1) or sub-section (2), the Judges and division courts of the High Court for a new State may also sit at such other place or places in that State as the Chief Justice may, with the approval of the Governor, appoint.

64. The then Hon'ble Chief Minister of Karnataka addressed a letter dated 15.09.2004 to Hon'ble Chief Justice of Karnataka enumerating the number of cases pending as on different dates from 01.01.2000 to 30.07.2004 and has stated that the said statistics indicates a rising trend of cases and satisfies one of the important criteria of Jaswant Singh

Commission's recommendations. However, proximity has shown to be a motivating factor for accessing the High Court for redressal of grievances. Northern Karnataka's restrained use of High Court's Court's jurisdiction can be largely attributed to the difficulties faced by the people of northern Karnataka in reaching the Hon'ble High Court located at Bengaluru. The establishment of a Bench in northern Karnataka would prove to be an effective instrument for the expeditious dispensation of justice and would substantially reduce the inconvenience to the litigating public belonging to said region. It was further stated that the Government will endeavour to abide by the concerns listed at Part II of Jaswant Singh Commission prescriptions in deciding the location of the proposed Bench. Therefore, there is necessary to have an in-principle approval for a Bench of the High Court in northern Karnataka and that the State Government has earmarked Rs.20 crores in the budget for the current year for establishing a bench of the High Court in northern Karnataka. It was further stated that, if a higher allocation is required during the current financial year, the State Government is committed to provide the same. In the subsequent years also,

adequate budget provision for this purpose was assured. Thereby, requested the Chief Justice to establish two Circuit Benches in northern Karnataka and hear matters emanating from northern Karnataka region. Such an arrangement would meet the people's immediate requirements, their aspirations, improve the accessibility of High Court's services to the people of northern Karnataka. Accordingly, there were letter correspondences between Hon'ble Chief Justice and Hon'ble Chief Minister of Karnataka.

65. In view of the above, the notifications came to be issued by Hon'ble Chief Justice dated 19.10.2004 and 04.06.2008 exercising powers under Section 51(3) of the States Reorganization Act, 1956, based on the report of Hon'ble Mr. Justice G.C.Bharuka Committee and, taking into consideration the interest of litigant public of northern Karnataka, it is just and proper.

When majority of the members of Hon'ble Mr. Justice G.C.Bharuka Committee submitted the report dated 06.06.2003 supporting the establishment of Benches, and consequently,

when the Benches came to be established, except relying on the report of Jaswant Singh Commission which is of the year 1985 and the report of Justice Ashok Bhanu Committee, how the present writ petition involves 'public interest' is not shown by the petitioner by producing any materials before the Court. Admittedly, the report of Justice G.C.Bharuka Committee, in which, majority of the members supported the establishment of Benches, is not challenged in the present writ petition. In the entire pleadings, there is no whisper as to how the report of the Committee headed by Justice G.C.Bharuka dated 06.06.2003 is against public interest. It is also not in dispute that His Excellency the Governor of Karnataka has also given approval in exercise of powers conferred under Section 51(2) of the States Reorganization Act, 1956 and the same is also not challenged by the petitioner.

66. It is also not in dispute that, after establishment of Circuit Benches at Dharwad and Gulbarga, and after receiving complete proposal from the State Government in consultation with Hon'ble Chief Justice of High Court of Karnataka and His

Excellency the Governor of Karnataka, the Hon'ble the then Chief Justice of Karnataka, in July 2009 requested the Central Government to notify the Circuit Benches of High Court of Karnataka at Dharwad and Gulbarga as permanent benches, under the provisions of sub section (2) of Section 51 of the States Reorganization Act, 1956, and to enhance the sanctioned strength of Judges of Karnataka High Court from 41 to 56. The Deputy Secretary to the government of India addressed a letter dated 03.11.2009 to the Chief Secretary, Government of Karnataka, stating that, with the approva of the Chief Justice of India, it has been decided to create 9 posts of additional Judges (06 for Dharwad Bench and 03 for Gulbarga Bench) in the Karnataka High Court and with this, the Judge strength of the Karnataka High Court will stand revised to 50 i.e., 33 permanent Judges and 17 additional Judges.

The proposal for establishment of permanent benches of High Court of Karnataka at Dharwad and Gulbarga was approved by Hon'ble President of India on 08.08.2013, after approval of Central Cabinet, in exercise of powers under 51(2) of States

Reorganization Act. Accordingly, the High Court of Karnataka (Establishment of Permanent Benches at Dharwad and Gulbarga) Order, 2013, came to be issued by Hon'ble President of India, to the effect that the permanent Bench of the High Court of Karnataka at Dharwad shall come into operation on 24.08.2013 and the permanent Bench of the High Court of Karnataka at Gulbarga shall come into operation on 31.08.2013. The same is in accordance with law.

67. It is undisputed fact that Circuit Benches were constituted on 04.06.2008 to start functioning w.e.f. 07.07.2008 and the present writ petition came to be filed on 16.05.2014 after lapse of more than six years. Absolutely there is no explanation for the inordinate delay of 06 years in filing writ petition challenging establishment of Circuit Benches. The petitioner is a practicing Advocate. As admitted by him, he is practicing in High Court of Karnataka, principal Bench and also at Dharwad and Kalaburagi Benches. He was sitting on the fence for more than 06 years watching the establishment of Benches, enhancement of Judges and Staff strength. He woke up only

when the Circuit Benches were made permanent Benches by the Hon'ble President of India on 08.08.2013 and filed the writ petition on 16.05.2014. Thereby, petitioner is not entitled to any relief. The powers exercised by the President under Section 51(2) of the States Reorganization Act, 1956, has not been challenged by the petitioner. The petitioner, being a practicing advocate, who has practiced in the principal Bench as well as at Benches at Dharwad and Kalaburagi, as admitted by him in the memorandum, has filed the present writ petition after lapse of six years from the date of establishment of Benches. Thereby, the writ petition is not maintainable and the same is liable to be dismissed. It is also not in dispute that, the recommendation made by Hon'ble Chief Minister, approved by His Excellency the Governor of Karnataka, approved by Central Cabinet and Hon'ble Chief Justice of India, with regard to establishment of permanent Benches has not been challenged by the petitioner. What is challenged is only annexure-M dated 08.08.2013 issued by Hon'ble President of India in exercise of powers conferred under Section 51(2) of States Reorganization Act, 1956 after consonance with His Excellency the Governor of Karnataka and

Hon'ble Chief Justice of Karnataka. In the entire writ petition, petitioner has not questioned the powers of Hon'ble President of India under Section 51(2) of the States Reorganization Act, 1956. In the absence of the same, the writ petition filed by petitioner is not maintainable and liable to be dismissed.

68. It is not the case of the petitioner that the findings of the Committee headed by Hon'ble Mr. Justice G.C.Bharuka is not based on any material on record. Once the report submitted by Hon'ble Mr. Justice G.C.Bharuka Committee was accepted on 06.06.2003 and reached finality, followed by subsequent notifications, the petitioner cannot have any grievance, unless it is established before the Court that Committee recommendations for establishment of Benches is without any material. On that ground also the writ petition is liable to be dismissed.

69. Learned counsel for petitioner contended that Part V of the States Reorganization Act, 1956, is not applicable for constitution of permanent bench, as it is only temporary and transitional provision. He contended that, once the High Court Act, 1961 came into force, any of the provisions of States

Reorganization Act, 1956 is not applicable. Thereby, there is no consistent stand of the petitioner as to which Act is applicable i.e., States Reorganization Act, 1956 or Mysore High Court Act, 1884 or Mysore/Karnataka High Court Act, 1961. The preamble of the Karnataka High Court Act, 1961 clearly depicts that, "an Act to make provision for regulating the business and the exercise of powers of the High Court of the State of Karnataka in relation to the administration of justice and to provide for its jurisdiction".

The provisions of Section 3 of the High Court Act, 1961 reads as under:

> **3. Registrar and Deputy Registrars.** - [(1)] The High Court shall have a Registrar and as many Deputy Registrars as may be determined by the Governor in consultation with the High Court.
>
> [(2) The High Court may also have as many Additional Registrars, Joint Registrars and Assistant Registrars as may be determined by the Governor in consultation with the High Court.]

The High Court must necessarily carry on its administrative functions from the principal seat, i.e,. the place where the High Court transacts every kind of business in all its capacities. The High Court, as such, is located there, but it may have more than one seat for transaction of judicial business. The constitution and structure of High Court depends on statute creating it. Unlike the creation of a permanent bench under sub section (2) of Section 51 of the States Reorganisation Act, 1956, which must bring about a territorial bifurcation of the High Court, there is no territorial bifurcation of the High Court merely because the Chief Justice appoints other places under Section 51(3), where the Judges and division courts shall also sit. The power under Section 51(3) is in the unquestioned domain of Hon'ble Chief Justice, the only condition being that he must act with the approval of His Excellency the Governor. It is basically an internal matter pertaining to the High Court. The Chief Justice has full power, authority and jurisdiction in the matter of allocation of business of the High Court which flows not only from provision contained in sub Section (3), but inheres in him in the very nature of things. The opinion of Chief Justice in this

matter must therefore normally prevail, because it is for more convenient transaction of judicial business. The non obstante clause contained in sub Section (3) gives an overriding effect to the powers of Hon'ble Chief Justice and Registrar General as contemplated under Section 3, is only one Registrar General for the High Court of Karnataka and there are Additional Registrar Generals appointed to the Circuit/Permanent Benches at Dharwad and Kalaburagi, as contemplated under Section 3 of the Act. Legally, the position is quite clear under Section 51(3) of the Act. The Judge sitting at Dharwad and Kalaburagi constitute a part of High Court of Karnataka. They are as much as part of High Court of Karnataka, Bengaluru. And if we might say so distinguish part of the High Court of Karnataka, as if they were sitting under the same roof under which Judges functioning at High Court of Karnataka, Bengaluru. All that happens is that the Chief Justice under the powers given to him distributed the work to various Judges and various Divisional benches and acting under that power he distributes certain work to Judges sitting at Dharwad and Kalaburagi.

70. The political changes necessarily affected the constitution and structure of the High Court. Under the Constitution of India, Parliament alone has legislative competence to make law relating to entry 78 List I of Seventh Schedule which reads as under:

> 78.Constitution and Organization (including vacations) of the High Courts except provisions as to officers and servants of High Courts; persons entitled to practice before High Court.

Under the Scheme of States Reorganisation Act, 1956, 1956 (Act 37 of 1956) it would appear that having constituted the High Court for the State of Karnataka under Section 49(1) of the Act and conferred jurisdiction on it under Section 52 in relation to the territories of the State, formed and left to the various high constitutionai functionaries designated in these subsections of Section 51 of the Act to determine the place where the principal seat of the High Court should be located and places where permanent benches of the High Court may be established, as has been done in State of Karnataka, one bench at Dharwad and one bench at Kalaburagi to ensure access justice to the door

step of litigants or where the Judges of division of high court may also sit, on the reorganisation of States as from appointed day i.e., 01st November 1956, the territories of the State of Karnataka. On the second recommendation made by majority of five Judges of the Committee consisting of seven Judges committee, two circuit benches viz., Dharwad and Kalaburagi, came to be established, taking into consideration the overall circumstances, with the approval of all constitutional functionaries as contemplated under Section 51 of the States Reorganization Act, 1956. The cabinet decision was taken by Government of India and was approved by the Hon'ble Chief Justice of India. This Court cannot sit over the decision of not only Government of India but also decision of Hon'ble Chief Justice of India. One cannot assume or impute to a high constitutional authority, like the Chief Justice of India, such procedural or substantive error. If Parliament has reposed faith in the Chief Justice of India as the paterfamilias of the judicial hierarchy in this Country, it is not open for anyone to contend that the Chief Justice of India might have given his concurrence without application of mind or without calling for the necessary

inputs. Admittedly, in the present case, on the recommendation made by the committee consisting of Senior Judges of this Court about establishment of circuit benches, same was approved by Hon'ble Chief Minister and with the approval from His Excellency the Governor of Karnataka, Chief Justice of Karnataka made a proposal for establishment of circuit benches and the same was approved by Central Cabinet as well as Hon'ble Chief Justice of India. Accordingly, Hon'ble President of India, by the order dated 08.08.2013 concurred for establishment of permanent benches at Dharwad and Kalaburagi in exercise of powers under Section 51(2) of the States Reorganization Act, 1956. Thereby, the petitioner has not made out any ground to quash the notification issued by Hon'ble the President of India. On that ground also, the writ petition is liable to be dismissed.

71. It is undisputed fact that the opinion of the Chief Justice to appoint the seat of the High Court at a place other than the principal seat under sub section (3) of Section 51 of the Act must therefore normally prevail because it is for the more convenient transaction of judicial business. The Judges and

Division Courts at Dharwad and Kalaburagi are part of the High Court of Karnataka, Bengaluru, which is the principal seat and they exercise the jurisdiction as Judges of High Court of Karnataka. Hence it is apparent that, by virtue of power conferred on the Chief Justice under sub section (3) of Section 51 of the Act, the Chief Justice can establish benches, at such place or places where the Judges and Division Courts may sit and he has power and authority to issue administrative directions for filing of cases or institution of proceedings at such place or places. By that process, there will be no territorial bifurcation of the High Court of Karnataka, merely because of the arrangement made in terms of the impugned notifications vide Annexures-E and F dated 19.10.2004 and 04.06.2008 respectively. The Hon'ble Chief Justice of High Court has the prerogative to distribute the business of the High Court, both judicial and administrative. The Chief Justice is the master of roster and that he alone has the right and power to decide how the benches of the High Court are to be constituted, which Judge has to sit along and which cases he can and as required to hear and also as to which Judges shall constitute Division Bench and

what work those benches shall do. It cannot be held to be wrong or illegal. Thereby, there is nothing wrong in specifying that new cases arising from certain Districts shall be filed at a particular circuit bench, as those cases are to be heard and decided by Judges sitting at that circuit bench. Such an arrangement, is for administrative convenience and advantage of the litigants. "After all, the Courts are meant for the benefit of litigant public and hence, their convenience should be the paramount consideration and not for the lawyers or Judges." Thereby, the impugned notifications Annexures-E, F and M issued by the constitutional authorities are positive and concrete step to achieve the goal of providing "easy and less expensive access to justice to all." On that ground also, the writ petition is liable to be dismissed.

72. Though, learned counsel for the petitioner mainly contended that constitution of benches at Dharwad and Kalaburagi is against the dictum of the Hon'ble Supreme Court in the case of ***Federation of Bar Association in Karnataka*** and that dictum of the Hon'ble Supreme Court is binding on all

Courts as provided under Article 141 of the constitution of India, it was a case where a committee of five judges was constituted, who after hearing only the Bar Associations submitted the report disfavouring the proposal for establishment of a bench away from principal seat of High Court. The Hon'ble Supreme Court, relying upon the Committee report which disfavoured the establishment of a Bench outside the principal seat of the High Court, held that the Chief Justice cannot be pressurised to take a different view through agitations and other tactics and question of establishment of a bench of the High Court away from principal seat of the High Court is not to be decided on emotional and sentimental or parochial considerations. "The High Court is the best suited machinery to decide whether it is necessary and feasible to have a bench outside the principal seat of High Court." When the Chief Justice of a High Court is a singular office, and when the Advocate General is also a singular office, vivisection of the High Court into different benches at different regions would undoubtedly affect the efficacy of the functioning of the High Court. Distance factor may be a relevant consideration, but not the sole consideration nor even the

decisive consideration in determining the question of establishing other Benches of the High Court away from the principal seat. Accordingly, the Hon'ble Supreme Court dismissed the writ petition. Admittedly, the said writ petition came to be filed by Federation Of Bar Association disfavouring the proposed establishment of separate bench on the basis of the report of the committee of five Judges and the finding of the committee approved by the Hon'ble the Chief Justice and no final decision was taken for establishment of separate benches of High Court of Karnataka away from principal seat. As held by Hon'ble Supreme Court in the said case, it is the Hon'ble Chief Justice who is the final authority to take a view.

73. Admittedly in the present case, on the demand made by the Bar Association, Dharwad, the Chief Justice constituted a Committee consisting of seven Judges to consider the question as to whether it is necessary to have bench of the High Court in northern Karnataka. Majority of the committee members, i.e., five judges submitted the report dated 06.06.2003 opining that the Hon'ble Chief Justice may recommend for establishment of

permanent benches of High Court at Dharwad and Kalaburagi. Thereafter, based on majority recommendation, the Hon'ble Chief Minister requested to constitute the Bench and Hon'ble the Chief Justice after considering the entire material on record and subject to satisfaction, agreed to constitute benches of the High Court of Karnataka away from principal seat. Thereby, the order passed by the Hon'ble Supreme Court in the case of *Federation of Bar Association* filed under Article 32 of the Constitution of India is based on entirely different facts and circumstances. Admittedly, the Federation Bar Association in Karnataka is not a party to the present writ petition. Thereby, the said judgement is no way helpful to the case of the petitioner. At paragraph 8 of the said judgment, it is held as under:

> "8. As the Chief Justice of the High Court concerned is the important consultee in the matter of establishment of a Bench of the High Court, he being the head of that High Court has to form an opinion when it is required during such consultation process. Normally, the Chief Justice will not be guided by any political or parochial considerations. When he gives the opinion, it is the opinion of the High Court and not merely his personal opinion. So naturally he will

ascertain the views of his colleague Judges before he conveys his opinion. xxx"

With due respect, the said judgment does not bar the Chief Justice either to set up a subsequent Committee for the same purpose or precludes the exercise of powers under Section 51(2) and 51(3) of the States Reorganization Act, 1956. In view of the aforesaid ratio laid down by the Hon'ble Supreme Court, it is apparent that setting up of a Committee headed by Justice G.C.Bharuka, and accepting its report is in accordance with law and is sustainable.

74. The States Reorganization Act, 1956, is a permanent piece of legislation on the statute book and hence it cannot fall into desuetude or become inoperative through obsolescence or by lapse of time. A careful perusal of the provisions of the said act do not suggest that the enactment would lapse after achieving its object. In other words, the States Reorganization Act, 1956, would continue to remain in force until specifically repealed by parliament or struck down by competent Court. In one breath, petitioner contended that the provisions of States

Reorganization Act, 1956 are not applicable, since the object of the Act was Reorganization of States and all matters incidental thereto. Hence resorting to sub sections (2) and (3) of Section 51 of the Act for the sole purpose of creating new benches of High Court having no nexus to the object of the Act is misplaced cannot be accepted. It is also contended by the petitioner that impugned notifications issued by the Constitutional authorities will not have powers According to petitioner Section 17 of the Mysore High Court Act, 1884 has not been repealed by Karnataka High Court Act, 1961 and in the light of Section 69 of States Reorganization Act, 1956, Section 17 of Mysore High Court Act, 1884 is still enforceable, cannot be accepted. The constitution and organization of the High Courts and extension of jurisdiction to and of the High Court from any Union Territory are the subject matter of framing laws by the parliament as the same would fall within the ambit of entry 78 and 79 in list I of Seventh Schedule appended to the Constitution of India. Therefore, the provisions of States Reorganization Act, 1956 legislated by the parliament in exercise of powers therein under Section 51(2) and (3) of the Act cannot be found fault with.

75. "Access to Justice is a fundamental right of a citizen under Article 21 of the Constitution of India and therefore, it is incumbent upon the State to include judiciary to ensure that justice delivery system reaches out to every nook and corner of its territory." "It means, the State should provide enhanced capability and adequate infrastructure for functioning of the Court to enable ease of access to justice to every citizen." Our view is fortified by the dictum of the Hon'ble Supreme Court in the case of ***All India Judges Association vs. Union of India*** reported in ***(2018) 17 SCC 555***, wherein at paragraphs 6, 7, 9, 10, it is held as under:

> ***6.*** *It has to be firmly borne in mind and accepted as a reality that raising the infrastructure standards in the court complexes is the need of the hour as it is the basic requirement for the courts in the twenty-first century. We are absolutely clear that when people are aware of their rights, their desire to get the rights realised is enhanced and they would like to knock at the doors of the Court to shape their aspiration into reality. It is a welcome phenomenon and conceptually, Rule of Law nourishes and garners the said idea. The idea of speedy and quality justice*

dispensation system cannot be treated with status quoist approach, for the definition of infrastructure and the understanding of the same in all associated contexts changes with the passage of time and introduction of modern technology in many a sphere of life. The consumers of justice expect prompt and effective delivery of justice in an atmosphere that is acceptable. Therefore, infrastructure enhancement will go a long way in strengthening functioning of the court and would improve the productivity in the justice delivery system.

7. *Be it noted, a court complex is not just a building. It is the building of justice which breathes and infuses life into the exalted and sublime ideals of justice. The widening gap between the ideal and the real and between the vision and the pragmatic realisation of justice has to be bridged by proper access to justice for all.*

9. *In view of the above, we deem it extremely necessary to declare that it is essential to provide basic infrastructural facilities, amenities, utilities and access oriented features in all court complexes around the country as it is axiomatic that infrastructure forms the core for efficient and*

efficacious dispensation of speedy and qualitative justice.

10. *The court development plan should comprise of three components — a short-term plan (or annual plan); a medium-term plan (or a five-year plan); and a long-term plan (ten-year plan). The annual plans so prepared shall be incorporated into the five-year plan which, in turn, rolls into the ten-year plan. While focussing on judicial infrastructure, due regard has to be given to adequate and model court building, furniture, fixture, Judges, chamber, record/file storage, adequate sitting and recreation arrangement for staff and officers, sitting/waiting room for litigants and Bar members, latest gadgets and technology. In other words, the core factors in the design of a court complex must reckon — (a) optimum working conditions facilitating increased efficiency of judicial officers and the administrative staff; (b) easy access to justice to all and particularly to the underprivileged, persons with disability, women and senior citizens; (c) safety and security of Judges, administrative staff, litigants, witnesses and undertrial prisoners. The court complex must consist of:*

I. COURT BUILDING

(i) Court rooms

(ii) Judges' chambers

(iii) Judges' residential complex

(iv) Litigants' waiting area

(v) Administrative offices

(vi) Conference Hall/Meeting Room

(vii) Video conferencing rooms

(viii) Mediation centre/Legal Services Authority

(ix) Common rooms for male/female staff

(x) Staff canteen

(xi) De-stress rooms for male/female staff

(xii) Office space for Government Pleader/Public Prosecutor/Advocate General/Standing Counsel for Union of India with separate cubicles for conducting conferences and including space for accommodating their Secretarial staff and files

(xiii) Support facilities like ramp, crèche, etc.

II. SPACE FOR LAWYERS/LITIGANTS

(i) Bar rooms for ladies and gents

(ii) Consultation rooms and cubicles

(iii) Stamp vendors and notary public/oath commissioner/typist/photocopy/business centre

(iv) Library

(v) Canteen for lawyers and litigants

(vi) Facilitation counter for litigants/visitors

(vii) Support facilities

III. FACILITY CENTRE providing for common facilities for functioning of the complex unrelated to courts such as bank, post office, medical facility, disaster management, etc.

IV. UTILITY BLOCK for accommodating the utility services such as AC plant, electrical sub-station, DG set/Solar panel, STP, Repair workshop, storage, garage, etc.

V. JUDICIAL LOCK-UPS.

VI. STRONG ROOM FOR RECORD PRESERVATION.

VII. ADEQUATE PARKING SPACE for Judges, lawyers, litigants and other visitors.

VIII. IT INFRASTRUCTURE FOR COMPUTERISATION AND ECOURTS

76. In identical circumstances, the Division Bench of the Madras High Court while considering the constitution of Madurai and other Benches, in the case of ***K.Sridhar Kumar vs. The Union of India*** reported in ***2002-1-LW 742***, the learned single Judge at paragraphs 24, 25 and 26, held as under:

> **"24.** It may also be useful to refer a decision of the Apex Court in *S.I. Corporation (P.) Ltd.* v. *Secretary, Board of Revenue*, AIR 1964 SC 207 which lays down that the expression "subject to the provisions of the Constitution" occurring in Article 225 of the Constitution means that it should not be inconsistent with the Constitutional Provisions other than the question relating to Legislative competence. In other words, the Supreme Court has held that all existing laws will continue in force without reference to the question of Legislative competence, subject to the same being not in conflict with any specific provision of the Constitution. Clause 31 of the Letters Patent has not been shown to be in conflict with any provision of the Constitution. On the other hand, the said provision is consistent with the scheme of the Constitution, more particularly Article 231 (2) (c) which contemplates a common High Court for two or more States to have a Bench in a place other than

the principal seat. That apart, several enactments passed by the Parliament transferable to Entry 78 List I to the VII Schedule contained provision providing for the establishment of Benches outside the place where the principal seat is situated. Accordingly, there is no merit in any one of the contentions raised by Mr. K. Vijayan, learned senior counsel. Though he has referred to a decision of the Supreme Court in *Federation of Bar Association in Karnataka* v. *Union of India*, 2000 (5) Supreme 267 : 2000 (6) S.C.C. 715, even in the penultimate paragraph Their Lordships have observed that there is no use in harping on the situations in certain other larger States where High Courts have benches established away from the principal seat due to variety of reasons. In such a circumstance, I am of the view that the said decision is not helpful to the petitioner's case.

25. In the light of what is stated above, there are no merits in the above writ petitions and they are liable to be dismissed. Before parting with these cases, as stated earlier, both the writ petitions have been filed by two practising advocates of the High Court, Madras. The petitioner in the former case got enrolled in the year 1986 and has been practising in this Court on all branches of law. Though the

petitioner in the latter case did not set out the details regarding his enrolment, however, it is stated that he is a practising lawyer in the Madras High Court. There is no explanation by either of them for filing these writ petitions at this juncture. It is pertinent to note that only considering the plight of the litigant public, escalation in transport and other incidental charges, the Committee has recommended the constitution of a Bench at Madurai. According to the learned Additional Advocate General, the structural work for the Madurai Bench has already been completed. It is not their case that they were not aware of the report of the Jaswandh Singh Commission recommending constitution of a Bench at Madurai for the benefit of the litigant public hailing from Southern Districts, and of the ear-marking of substantial amount for the construction of the Court-halls, administrative blocks, residential quarters for the Judges etc. even a year back. The details about the orders passed by the Government and the stages of construction work, as well as the inspection by the Hon'ble Chief Justice etc., have been flashed by the Media at every stage. As stated earlier, the petitioners being practising advocates in the High Court, they cannot plead ignorance of the above developments. As rightly pointed out by the learned

Additional Advocate General, both the writ petitions have to be dismissed in limine on the ground of laches. Even on merits, as stated above, the writ petitions are lacking even the basic ingredients justifying their claim. In any event, this Court places on record its displeasure in the act of the petitioners in filing these writ petitions unmindful of the precious time of this Court which otherwise could have been utilised in other better and genuine cases. This Court places on record the strenuous efforts made by the learned Additional Advocate General in placing all the relevant materials to arrive at a just decision.

26. For all the above reasons, both the writ petitions are dismissed. No costs. Consequently, W.P.M.P. Nos. 3331 and 4684 of 2002 are also dismissed."

77. Against the said order of the learned single Judge, an appeal came to be filed and the Division Bench, by the order dated 11.03.2004 dismissed the appeal, i.e., in the case of ***R Suresh Kumar, Advocate vs. Union of India and others*** reported in ***2004-2 LW 277***,at paragraphs 17, 18, 19, 20 and 21 held as under:

"17. This takes us to the other argument by the learned senior counsel that the High Court had no

jurisdiction to pass the resolution dated 31-8-1995 and the subsequent resolution of the Committee dated 24-1-2000, which was ratified by the Full Court by resolution dated 18-04-2000 for creating the permanent Bench at Madurai, in the absence of an order by the Chief Justice under Clause 31 of the Letters Patent or a legislative provision for creating a permanent Bench at Madurai. Learned counsel says that the power to create a Bench of the Madras High Court would lie only with the Central Government as the subject is covered by Entry 78 of the Union List under Schedule VII to the Constitution of India. The said entry reads as follows:

> "78. Constitution and Organisation including vacations of the High Courts except provisions as to officers and servants of High Courts; persons entitled to practise before the High Courts."

He, therefore, suggests that even for initiating the proposal to create the Bench at Madurai, a legislative pronouncement or, as the case may be, an order under Clause 31 of the Letters Patent was necessary and, in the absence of the same, the process initiated to create a Bench at Madurai is otiose and without jurisdiction.

18. The argument is undoubtedly incorrect. In the first place, the learned counsel has not been able to show us anything to suggest that the Chief Justice/High Court cannot initiate the proposal to create a Bench. It is undoubtedly true that under Clause 31 of the Letters Patent, the Chief Justice can start a Circuit Bench, of course, with the prior approval of the Governor. In fact, the resolution dated 31-8-1995 was only to that effect. However, it seems that thereafter the proposal was mooted to create a Permanent Bench, with which the High Court seems to have agreed. It is pointed out by Shri V.T. Gopalan that it is for that, resolution dated 24-1-2000 was passed by the Special Committee of the High Court, which was constituted by the then Chief Justice and the resolution was also ratified by the Full Court later on. According to the learned Additional Solicitor General, the decision, therefore, was taken to create a Permanent bench at Madurai, which was to be implemented later on through a legal procedure. He argues that the Bench can be created firstly by passing a specific enactment in pursuance of the powers under Entry 78 of the Union List in Schedule VII to the Constitution or secondly, through the Presidential notification made under Sec. 51(2) of the States Reorganisation Act. In addition to

this, learned Additional Solicitor General says that a Circuit Bench can be created under Clause 31 of the Letters Patent which has been found to be on par with the provisions of Sec. 51(3) of the States Reorganisation Act as held in *State of Maharashtra* v. *Narayan* (supra). He made a statement that a proper step will be taken to create a Permanent Bench under a proper legislation which could be either passing the law for that purpose under Entry 78 of the Union List or, as the case may be, by a Presidential notification under Sec. 51(2) of the State Reorganisation Act. After this specific statement made at the Bar by the learned Additional Solicitor General, we have no doubts in mind that a proper course will be undertaken for creation of the Bench at Madurai and unless such steps are taken, the Bench will not be operative unless, of course a third option of creating a Circuit Bench via Clause 31 of the Letters Patent is taken, for which a prior approval of the Governor would be necessary. However, we cannot countenance an argument that the process to create a Permanent or a Circuit Bench at Madurai could not have been initiated at all unless there was a law passed or unless a Presidential Notification was issued under Sec. 51(3) of the States Reorganisation Act or unless the Chief Justice

had passed an order with the prior approval of the Governor under Clause 31 of the Letters Patent. We have already explained and it has already come in the address of the learned Additional Solicitor General that the Central Government had also taken a decision favouring a Permanent Bench at Madurai. The High Court had also taken a decision firstly to create the Circuit Bench way back in the year 1995. After all, when such decision is taken, it has to be considered by the concerned authorities like the Central Government, the Chief Justice and the High Court or, as the case may be, the Governor. The peculiarity of the situation here was that the High Court agreed to have a Circuit Bench or, as the case may be, a Permanent Bench only provided there was a full infrastructure ready and there was nothing wrong in it because it would have been futile to create/constitute a Bench first and then to wait for years together before activating the same. It is impossible for a Bench to work in the absence of the necessary infrastructure like proper buildings for the High Court, residential accommodation for the Judges, residential accommodation for the staff and the other facilities like Chambers for the lawyers, etc. The contention that all the exercise is without jurisdiction is, therefore, obviously incorrect.

19. The decision by the Central Government to create a Bench at Madurai backed by the administrative decision of the High Court would provide a firm pedestal for taking taking the initial steps to create a Bench. We do not see anything wrong in the State Government creating the necessary infrastructure in pursuance of the agreement by the High Court and the decision taken by the Central Government. The learned Additional Solicitor General argues, rightly in our opinion, when he says that a decision was already taken by the Central Government and it should be left to the Central Government to implement the same by taking proper steps.

20. Shri Vijayan, however, took great exception to the factual statement made by Shri V.T. Gopalan in which the learned Additional Solicitor General also referred to Sec. 51(2) of the State Reorganisation Act and wanted to contend that such a decision could not be possible in view of the fact that the State of Tamil Nadu was not a 'new State' and that the power under Sec. 51(2) of the States Reorganisation Act could be implemented only in respect of the 'New State'. We have already explained that the learned single Judge has already held that the words 'State of Tamil Nadu' (the then Madras State) referred to in

Sec. 4 under Part II of the States Reorganisation Act can be deemed to be a 'new State' and the inference of the learned single Judge and the consequential dismissal of the writ petition, W.P. No. 2402 of 2002, where this question was raised has remained unchallenged. We would, therefore, leave the question at that. Further, in our opinion, it would now be futile to go into that question as the procedural aspect of creation of the Bench of the Madras High Court at Madurai is inextricably connected with the basic question as to whether there should be a Bench at all at Madurai or not. We have already pointed out that this basic issue and the decision therefor could have been challenged only at the proper time. The petitioner chose to keep silent at the material time and has chosen to woke up now after crores of rupees have been spent and is trying to raise the procedural objections only to thwart the basic objective of creation of the Bench at Madurai, which is not permissible. We have no doubts in our minds that the Central Government would take proper steps in law procedurally by taking recourse to proper legal procedure. In any event, by a mere procedural challenge, petitioner could not be permitted to achieve a wider objective of thwarting the Bench at Madurai at all more

particularly at this juncture in the year 2004 when the first decision was taken in the year 1995 and was ratified in the year 2000 after a firm decision was taken in that behalf by the Central Government and further when crores of rupees are spent in creating infrastructure.

21. It must be borne in mind that the High Court, in exercise of its' powers, cannot ask the Legislature to legislate or to legislate in a particular manner. So also, the High Court shall not ask the Legislature not to legislate or to legislate in a particular manner. How a particular objective is to be carried out or realised has to be left to the wisdom of the Legislature altogether and we have no doubts that the objective of bringing about the Bench of the Madras High Court at Madurai shall so obtained. We, therefore, agree with the learned single Judge. The judgment of the learned single Judge, dismissing the writ petition, W.P. No. 3333 of 2002 and dismiss this appeal. No other point were argued excepting those referred to above."

78. The Hon'ble Supreme Court while considering the provisions of Section 51(3) of the States Reorganization Act, 1956, in the case of ***State of Maharashtra vs. Narayan***

Shamrao Puranik and others reported in ***(1982) 3 SCC 519*** regarding establishment of a permanent Bench at Aurangabad, at paragraphs 11, 12, 13, 14, 15, 17, 21, 25, 26 and 27, held as under:

> ***"11.*** *Three questions arise for consideration in this appeal: (1) Whether the power of the President under sub-section (2) of Section 51 of the Act or that of the Chief Justice of the High Court under sub-section (3) of SSction 51 of the Act, can no longer be exercised due to lapse of time. (2) Whether the exercise of power by the Chief Justice under sub-section (3) of Section 51 of the Act appointing Aurangabad to be a place at which the Judges and Division Courts of the High Court shall also sit is co-related to the reorganisation of the States, or has no nexus with the object and purposes sought to be achieved by the Act and is only a part of the demand for decentralisation of the administration of justice in general. (3) Whether the power of the Chief Justice under sub-section (3) of Section 51 of the Act does not include a power to establish a Bench or Benches at such place or places carving out territorial jurisdiction for such Benches and authorising the filing or institution of proceedings at such places.*

12. *It is difficult to agree with the High Court that the High Court of Bombay is not the High Court of a new State within the meaning of sub-section (1) of Section 49 of the Act, merely because the bilingual State of Bombay was bifurcated into two separate States of Maharashtra and Gujarat under Section 3 of the Bombay Reorganisation Act, 1960. Nor do we see any valid basis for the view taken by the High Court that the power of the President to establish a permanent Bench or Benches of the High Court under sub-section (2) of Section 51 of the Act or that of the Chief Justice to appoint, with the approval of the Governor, a place or places where the Judges and Division Courts may also sit under sub-section (3) of Section 51 of the Act, can no longer be exercised, in relation to the High Court of Bombay. It was rightly not disputed before us that the High Court of Bombay was the High Court for the new State of Bombay within the meaning of sub-section (1) of Section 49 of the Act and therefore the provisions of Section 51 of the Act are still applicable. That must be so because the High Court of Bombay owes its principal seat at Bombay to the Presidential Order issued under sub-section (1) of Section 51 of the Act. The expression 'new State' occurring in sub-section (1) of Section 49 of the Act*

is defined in Section 2(i) to mean "a State formed under the provisions of Part II". The State of Bombay was a new State formed under Section 8 of the Act, which occurs in Part II. The Bombay Reorganisation Act, 1960 (11 of 1960) which reconstituted the erstwhile State of Bombay into the State of Maharashtra and the State of Gujarat provides, inter alia, by sub-section (1) of Section 28 that, as from the appointed day, i.e. May 1, 1960, there shall be a separate High Court for the State of Gujarat and that the High Court of Bombay shall become the High Court for the State of Maharashtra. Sub-section (2) of Section 28 of that Act provides that the principal seat of the Gujarat High Court shall be at such place as the President may, by notified order, appoint. It is rather significant that the Bombay Reorganisation Act, 1960 contains no similar provision with regard to the principal seat of the High Court of Bombay. That being so, the continued existence of the principal seat of the Bombay High Court at Bombay is still governed by sub-section (1) of Section 51 of the Act. This conclusion of ours is reinforced by the opening words of Section 41 of that Act which provides for the setting up of a permanent Bench of the Bombay High Court at Nagpur, and it reads:

> *"41. Permanent Bench of Bombay High Court at Nagpur.—Without prejudice to the provisions of Section 51 of the States Reorganisation Act, 1956, such Judges of the High Court at Bombay, being not less than three in number, as the Chief Justice may from time to time nominate, shall sit at Nagpur in order to exercise the jurisdiction and power for the time being vested in that High Court in respect of cases arising in the districts of Buldana, Akola, Amravati, Yeotmal, Wardha, Nagpur, Bhandara, Chanda and Rajpura:*
>
> *Provided that the Chief Justice may, in his discretion, order that any case arising in any such district shall be heard at Bombay."*

13. *The legislative intent is clear and explicit by the use of the words "without prejudice to the provisions of Section 51 of the States Reorganisation Act, 1956". The legislature presupposed the continued existence of Section 51 of the Act in relation to the High Court of Bombay. That shows that while enacting Section 41 of the Act, Parliament retained the power of the President of India both under sub-section (1) and sub-section (2) of Section*

51 of the Act and that of the Chief Justice under sub-section (3) thereof. If there is continued existence of sub-section (1) of Section 51 of the Act in relation to the principal seat of the High Court for a new State, a fortiori, there is, to an equal degree, the continued existence of the provisions contained in sub-sections (2) and (3) of Section 51 of the Act. This is also clear from the provisions of Section 69 of the Act which in terms provides that Part V which contains Section 51 of the Act shall have effect subject to any provision that may be made, on or after the appointed day with respect to the High Court of a new State, by the legislature or any other authority having power to make such provision.

14. *Nor can we subscribe to the proposition that the power of the President under sub-section (2) of Section 51 of the Act, or that of the Chief Justice of the High Court of a new State under sub-section (3) of that Section, can no longer be exercised due to lapse of time. The High Court is of the view that the provisions of the Act and in particular of Section 51 were meant to be exercised either immediately or within a reasonable time of the reorganisation of the States and therefore the exercise of the power by the Chief Justice under sub-section (3) of Section 51*

of the Act appointing Aurangabad as a place where the Judges and Division Courts of the High Court may also sit, after a lapse of 26 years, is constitutionally impermissible. Any other view, according to the High Court, is bound to give rise to a very anomalous situation as in nine out of 16 States not affected by the Act, the creation of a permanent Bench of a High Court must be by an Act of Parliament while in seven new States formed under the Act, the same could be achieved by a Presidential Notification under sub-section (2) of Section 51 of the Act. Furthermore, in States where the High Courts were established by Letters Patent, the powers conferred on the Chief Justices of the High Courts qua sittings of Single Judges and Division Courts can be exercised only with legislative sanction whereas under sub-section (3) of Section 51 it can be done by the Chief Justices of the High Court for a new State, with the approval of the Governor of that State. Such a construction of the provisions of Section 51 of the Act would, according to the High Court, result in creating discrimination between the States. The reasoning of the High Court that the Act being of a transitory nature, the exercise of the power of the President under sub-section (2) of Section 51 of the Act, or of the Chief Justice under

sub-section (3) thereof, after a lapse of 26 years, would be a complete nullity, does not impress us at all. The provisions of sub-sections (2) and (3) of Section 51 of the Act are supplemental or incidental to the provisions made by Parliament under Articles 3 and 4 of the Constitution. Article 3 of the Constitution enables Parliament to make a law for the formation of a new State. The Act is a law under Article 3 for the reorganisation of the States. Article 4 of the Constitution provides that the law referred to in Article 3 may contain "such supplemental, incidental and consequential provisions as Parliament may deem necessary". Under the scheme of the Act, these powers continue to exist by reason of Part V of the Act unless Parliament by law otherwise directs. The power of the President under sub-section (2) of Section 51 of the Act, and that of the Chief Justice of the High Court under sub-section (3) thereof are intended and meant to be exercised from time to time as occasion arises, as there is no intention to the contrary manifested in the Act within the meaning of Section 14 of the General clauses Act. The High Court has assumed that the provisions of sub-sections (2) and (3) of Section 51 of the Act have 'ebbed out' by lapse of time. This assumption is plainly contrary to the meaning and effect of Section

69 of the Act which in terms provides that Part V which contains Section 51 of the Act, shall have effect subject to any provision that may be made on or after the appointed day with respect to the High Court of any State, by the legislature or any other authority having power to make such provision.

15. *It is a matter of common knowledge that Parliament considered it necessary to reorganise the existing States in India and to provide for it and other matters connected therewith and with that end in view, the States Reorganisation Act, 1956 was enacted. As a result of reorganisation, boundaries of various States changed. Some of the States merged into other States in its entirety, while some States got split and certain parts thereof merged into one State and other parts into another. These provisions were bound to give rise, and did give rise, to various complex problems. These problems are bound to arise from time to time. The Act is a permanent piece of legislation on the statute-book. Section 14 of the General clauses Act, 1897 provides that, where, by any Central Act or Regulation, any power is conferred, then unless a different intention appears, that power may be exercised from time to time as occasion arises. The Section embodies a*

uniform rule of construction. That the power may be exercised from time to time when occasion arises unless a contrary intention appears is therefore well settled. A statute can be abrogated only by express or implied repeal. It cannot fall into desuetude or become inoperative through obsolescence or by lapse of time. In R v. London County Council [LR (1931) 2 KB 215 (CA)], Scrutton, L.J. put the matter thus:

> *"The doctrine that, because a certain number of people do not like an Act and because a good many people disobey it, the Act is therefore 'obsolescent' and no one need pay any attention to it, is a very dangerous proposition to hold in any constitutional country. So long as an Act is on the statute-book, the way to get rid of it is to repeal or alter it in Parliament, not for subordinate bodies, who are bound to obey the law, to take upon themselves to disobey an Act of Parliament."*

As to the theory of desuetude, Allen in his Law in the Making, 5th Edn., p. 454 observes:

> *"Age cannot wither an Act of Parliament, and at no time, so far as I am aware, has it ever been admitted in our jurisprudence that a statute might become inoperative through obsolescence."*

The learned author mentions that there was at one time a theory which, in the name of 'non-observance', came very near to the doctrine of desuetude, that if a statute had been in existence for any considerable period without ever being put into operation, it may be of little or no effect. The rule concerning desuetude has always met with such general disfavour that it seems hardly profitable to discuss it further. It cannot be said that sub-section (2) or (3) of Section 51 of the Act can be regarded as obsolescent. The opening words of Section 41 of the Bombay Reorganisation Act, 1960 manifest a clear legislative intention to preserve the continued existence of the provisions contained in Section 51 of the Act. It was as recent as December 8, 1976 that the President issued a notification under sub-section (2) of Section 51 of the Act for the establishment of a permanent Bench of the Rajasthan High Court at Jaipur. The High Court is therefore not right in observing that the provisions of Section 51 of the Act

were not intended to be operative indefinitely and they were meant to be exercised either immediately or within a reasonable time, or that the powers of the President or the Chief Justice thereunder can no longer be exercised in relation to the High Court of Bombay.

16. *The conclusion reached by the High Court that the impugned notification issued by the Chief Justice under sub-section (3) of Section 51 of the Act was not directly connected with the reorganisation of the States, or had no nexus with the objects and purposes sought to be achieved by the Act but was only as part of the demand for decentralisation of the administration of justice in general, can only be justified as a necessary corollary flowing from its views expressed on other aspects of the matter. The creation of 14 new States by Part II of the Act based on a linguistic basis virtually led to the redrawing of the political map of India as a whole. Even after the reorganisation of the States in 1956, the political map of India continued to change owing to the growing pressure of political considerations and circumstances, The formation of the linguistic State of Bombay constituted under Section 8 of the Act became the source of struggle between the Gujarati*

and Marathi speaking people as a result of which the State of Bombay was further bifurcated in 1960. These political changes necessarily affected the constitution and structure of the High Court. Under the Constitution, Parliament alone has the legislative competence to make a law relating to the subject under Entry 78 of List I of the Seventh Schedule which reads:

> *"78. Constitution and organisation (including vacations) of the High Courts except provisions as to officers and servants of High Courts; persons entitled to practise before the High Courts."*

17. *Under the scheme of the Act, it would appear that having constituted a High Court for the new State of Bombay under sub-section (1) of Section 49 of the Act and conferred jurisdiction on it under Section 52 in relation to the territories of the new State, Parliament left it to the various high constitutional functionaries designated in the three sub-sections of Section 51 of the Act to determine the place where the principal seat of the High Court should be located and places where permanent Bench or Benches of the High Court may be established, or where the Judges and Division Courts*

of the High Court may also sit. On the reorganisation of the States as from the appointed day, i.e. November 1, 1956, the territories of the new State of Bombay formed under Section 8 of the Act and with it the jurisdiction of the High Court was considerably extended. The merger of the new territories of the Vidarbha region of the former State of Madhya Pradesh and the Marathwada region of the erstwhile State of Hyderabad together with the Saurashtra region of the newly constituted State of Gujarat was an additional source of strength of the High Court. It became necessary for the more convenient transaction of judicial business to establish, as from the appointed day, two Benches of the High Court at Nagpur and Rajkot to deal with matters arising from Vidarbha and Saurashtra regions respectively. The formation of the separate State of Gujarat in 1960 under Section 3 of the Bombay Reorganisation Act, 1960 resulted in severance of ties not only with the Saurashtra region but also with the Gujarat districts over which the High Court had exercised jurisdiction for about a century. The High Court of Bombay therefore underwent a major transformation in 1956 when the bilingual State of Bombay was formed under Section 8 of the Act and then again in 1960 when with the

formation of a separate State of Gujarat under Section 3 of the Bombay Reorganisation Act, the residuary State of Bombay was to be known as the State of Maharashtra. Nagpur which ceased to be the seat of the High Court of the new State of Madhya Pradesh, was given a Bench by an order issued by the then Chief Justice of the High Court under sub-section (3) of Section 51 of the Act. The arrangement was made permanent by Section 41 of that Act which provided for the establishment of a permanent Bench at Nagpur to deal with cases arising out of the Vidarbha region. It was a solemn assurance given to the people of the Marathwada region of the erstwhile State of Hyderabad by clause (7) of the Nagpur Pact that the provision with regard to the establishment of a permanent Bench at Nagpur shall also apply mutatis mutandis to the Marathwada region.

21. *It is necessary to emphasise that besides administering justice, the High Court has the administrative control over the subordinate judiciary in a State. The High Court must necessarily carry on its administrative functions from the principal seat i.e. the place where the High Court transacts every kind of business in all its capacities. The High Court*

as such is located there, but it may have more than one seat for transaction of judicial business. The constitution and structure of the High Court depends on the statute creating it. The decision in Nasiruddin v. State Transport Appellate Tribunal [(1975) 2 SCC 671 : AIR 1976 SC 331 : (1976) 1 SCR 505] is not directly in point as it turned on the construction of the provisions of the U.P. High Courts (Amalgamation) Order, 1948. It is however an authority for the proposition that after the amalgamation of the High Court of Allahabad and the Chief Court of Oudh, the two High Courts ceased to exist and became Benches of the newly constituted High Court by the name of the High Court of Judicature at Allahabad. Further, the Court held that a case 'instituted' at a particular Bench had to be 'heard' at that Bench. It recognised that there can be two seats of the High Court without a principal seat.

25. *It is clear upon the terms of Section 51 of the Act that undoubtedly the President has the power under sub-section (1) to appoint the principal seat of the High Court for a new State. Likewise, the power of the President under sub-section (2) thereof, "after consultation with the Governor of a new State and*

the Chief Justice of the High Court for that State, pertains to the establishment of a permanent Bench or Benches of that High Court of a new State at one or more places within the State other than the place where the principal seat of the High Court is located and for any matters connected therewith" clearly confer power on the President to define the territorial jurisdiction of the permanent Bench in relation to the principal seat as also for the conferment of exclusive jurisdiction to such permanent Bench to hear cases arising in districts falling within its jurisdiction. The creation of a permanent Bench under sub-section (2) of Section 51 of the Act must therefore bring about a territorial bifurcation of the High Court. Under sub-section (1) and sub-section (2) of Section 51 of the Act the President has to act on the advice of the Council of Ministers as ordained by Article 74(1) of the Constitution. In both the matters the decision lies with the Central Government. In contrast, the power of the Chief Justice to appoint under sub-section (3) of Section 51 of the Act the sittings of the Judges and Division Courts of the High Court for a new State at places other than the place of the principal seat or the permanent Bench is in the unquestioned domain of the Chief Justice, the only condition being that he must act with the approval of

the Governor. It is basically an internal matter pertaining to the High Court. He has full-power, authority and jurisdiction in the matter of allocation of business of the High Court which flows not only from the provision contained in sub-section (3) of Section 51 of the Act but inheres in him in the very nature of things. The opinion of the Chief Justice to appoint the seat of the High Court for a new State at a place other than the principal seat under sub-section (3) of Section 51 of the Act must therefore normally prevail because it is for the more convenient transaction of judicial business. The non obstante clause contained in sub-section (3) of Section 51 gives an overriding effect to the power of the Chief Justice. There is no territorial bifurcation of the High Court merely because the Chief Justice directs under sub-section (3) of Section 51 of the Act that the Judges and Division Courts shall also sit at such other places as he may, with the approval of the Governor, appoint. It must accordingly be held that there was no territorial bifurcation of the Bombay High Court merely because the Chief Justice by the impugned notification issued under sub-section (3) of Section 51 of the Act directed that the Judges and Division Courts shall also sit at Aurangabad. The Judges and Division Courts at

Aurangabad are part of the same High Court as those at the principal seat at Bombay and they exercise jurisdiction as Judges of the High Court of Bombay at Aurangabad. The Chief Justice acted within the scope of his powers. We see no substance in the charge that the impugned notification issued by the Chief Justice under sub-section (3) of Section 51 of the Act was a colourable exercise of power.

26. *As to the scope and effect of sub-section (3) of Section 51 of the Act, the question came up for consideration before Chagla, C.J. and Badkas, J. in Seth Manji Dana v.C.I.T., Bombay [Civil Appeal No 995 of 1957, decided on July 22, 1958 (Bom)] . This was an application by which the validity of Rule 254 of the Appellate Side Rules was challenged insofar as it provided that all income tax references presented at Nagpur should be heard at the principal seat of the High Court at Bombay, and the contention was that the result of this rule was that it excluded income tax references from the jurisdiction of the High Court functioning at Nagpur. In repelling the contention, Chagla, C.J. observed:*

"Legally, the position is quite clear. Under Section 51(3) of the State

Reorganisation Act, the Judges sitting at Nagpur constitute a part of the High Court of Bombay. They are as much a part of the High Court of Bombay, and if we might say so distinguished part of the High Court of Bombay, as if they were sitting under the same roof under which Judges function in Bombay. All that happens is that the Chief Justice, under the powers given to him under the Letters Patent distributes the work to various Judges and various Divisional Benches, and acting under that power he distributes certain work to the Judges sitting at Nagpur."

He then continued:

"All that Rule 254 does is to permit as a matter of convenience certain matters to be presented at Nagpur to the Deputy Registrar. If Rule 254 had not been enacted, all matters would have to be presented at Bombay and then the Chief Justice would have distributed those matters to different Judges, whether sitting in Bombay or at Nagpur. It is out of regard and consideration for the

people of Vidarbha and for their convenience that this rule is enacted, so that litigants should not be put to the inconvenience of going to Bombay to present certain matters. Therefore, this particular rule has nothing whatever to do either with Section 51(3) of the States Reorganisation Act or with the Constitution."

With regard to Rule 254, he went on to say:

"Now, having disposed of the legal aspect of the matter, we turn to the practical aspect, and let us consider whether this rule inconveniences the people at Nagpur. If it does, it would certainly call for an amendment of that rule. Now, there is particular reason why ali Income Tax References should be heard in Bombay and that reason is this. The High Court of Bombay for many years, rightly or wrongly, has followed a particular policy with regard to Income Tax References and that policy is that the same Bench should hear Income Tax References, so that there should be a continuity with regard to the decisions

given on these References. I know that other High Courts have referred to this policy with praise because they have realised that the result of this policy has been that Income Tax Law has been laid down in a manner which has received commendation from various sources. The other reason is and we hope we are not mistaken in saying so that the number of Income Tax References from Nagpur are very few. If the number was large, undoubtedly a very strong case would be made out for these cases to be heard at Nagpur."

He then concluded:

"After all, Courts exist for the convenience of the litigants and not in order to maintain any particular system of law or any particular system of administration. Whenever a Court finds that a particular rule does not serve the convenience of litigants, the Court should be always prepared to change the rule."

The ratio to be deduced from the decision of Chagla, C.J. is that the Judges and Division Courts sitting at

Nagpur were functioning as if they were the Judges and Division Courts of the High Court at Bombay.

27. *In Manickam Pillai case [AIR 1958 Ker 188 : ILR 1958 Ker 629 : 1958 Ker LJ 280] the Kerala High Court held that the curtailment of the territorial jurisdiction of the main seat of the High Court of a new State is a necessary concomitant to the establishment of a permanent Bench under sub-section (2) of Section 51 of the Act while contrasting sub-section (3) with sub-section (2). There, a question arose whether the temporary Bench of the High Court of Kerala with its principal seat at Ernakulam created by the Chief Justice at Trivandrum by an order issued under sub-section (3) of Section 51 of the Act was not the High Court of Kerala, and the Judges and Division Courts sitting at Trivandrum were precisely in the same position as Judges and Division Courts sitting in the several court-rooms of the High Court at its principal seat in Ernakulam. In other words, the contention was that the Judges and Division Courts sitting at Trivandrum could only hear and dispose of such cases as were directed to be posted before them by the Chief Justice but no new case could be instituted there.*

Raman Nayar, J. (as he then was) speaking for the Court held that the Trivandrum Bench was not the High Court of Kerala and the Judges and Division Courts sitting at Trivandrum could hear and dispose of only such cases as may be assigned to them. With respect, we are of the opinion that the view expressed by Chagla, C.J. in Manji Dana case [Civil Appeal No 995 of 1957, decided on July 22, 1958 (Bom)] is to be preferred. Chagla, C.J. rightly observes that the Judges and Division Courts at a temporary Bench established under sub-section (3) of Section 51 of the Act function as Judges and Division Courts of the High Court at the principal seat, and while so sitting at such a temporary Bench they may exercise the jurisdiction and power of the High Court itself in relation to all the matters entrusted to them."

79. It is also relevant to state at this stage that, the Government of India-Law Commission of India, in its Report No.230 on Reforms in the Judiciary-Some Suggestions submitted during August 2009 headed by Hon'ble Dr. Justice A.R.Lakshmanan, Chairman, Dr.Brahm A. Agrawal, Member Secretary and other Full time and Part time members, at

paragraphs 1.7, 1.8, 1.9, 1.10, 1.11, 1.24, 1.25, 1.26, 1.40, 1.42, 1.71, 1.72, 1.75 has stated as under:

Increase in number of Judges and creation of new Benches:

1.7 In almost every High Court, there is huge pendency of cases and the present strength of the judges can hardly be said to be sufficient to cope with the alarming situation. The institution of cases is much more than the disposal and it adds to arrears of cases. The litigating citizens have a fundamental right of life i.e., a tension-free life through speedy justice-delivery system. Now it has become essential that the present strength of the judges should be increased manifold according to the pendency, present and probable.

1.8 It is also necessary that the work of the High Courts is decentralized, that is, more Benches are established in all States. If there is manifold increase in the strength of the judges and the staff, all cannot be housed in one campus. Therefore, the establishment of new Benches is necessary. It is also in the interest of the litigants. The Benches should be so established that a litigant is not required to travel long.

1.9 It is true that the new establishments will require money, but it is necessary as a development measure, particularly, when efforts are being made for all-round development of the country. Therefore, the money should not be a problem. We have to watch and protect the interest of the litigants. We must always keep in mind that the existence of judges and advocates is because of the litigants and they are there to serve their cause only.

1.10 Sometimes, some advocates object to creating of new Benches and selection of new sites for construction of new buildings. But they raise objections in their personal, limited interest. Creation of new Benches is certainly beneficial for the litigants and the lawyers and a beginning has to be made somewhere.

1.11 There is huge pendency of cases in the apex court also. Now the time has come when not only the strength of the Hon'ble Judges in the Supreme Court should be increased and recommendations are made to fill up the vacancies soon but new Benches be also established in southern and eastern regions.

Justice at easy reach:

1.24 The Indian Judicial system is constantly exposed to new challenbges, new dimensions and new signals and has to survive in a world in which perhaps the only real certainty is that the circumstances of tomorrow will not be the same as those of today. The need of the hour is to erase misconception about the Judiciary by making it more accessible by utilizing the resources available to improve the service to the public, by reducing delays and making courts more efficient and less daunting.

1.25 Regarding decongestion, greater responsibility lies on the shoulders of the Governments of States or the Central Government. They are biggest litigants in the courts. They should approach the courts or contest cases only if necessary and not just to pass on the buck or contest for the sake of contesting. The time consumed in most of the cases by Courts of Sessions is somewhat under control and most of the cases are decided in a reasonable time-schedule. Main problem is about huge pendency in Magisterial Courts and the High Courts. It is absolutely essential to have additional courts for specifically trying the complaint cases filed under section 138 of the Negotiable Instruments Act. The

present state of affairs defeats the very object with which the provision was inserted in the Negotiable Instruments Act. Further, large numbers of petty offence cases should be taken out of the normal court channel to be decided by the Special Magistrates by appointing retired officers as Special Magistrates.

1.26 A speedy trial is not only required to give quick justice but it is also an integral part of the fundamental right of life, personal liberty, as envisaged in article 21 of the Constitution. The Law Commission is putting forth few suggestions to identify and remedy the causes of such delays in this Report, of course, after identifying major hurdles and impediments which cause delay in the disposal of criminal cases.

Access to justice

1.40 Traditional concept of "access to justice" as understood by common man is access to courts of law. For a common man, a court is the place where justice is meted out to him/her. But since the laws enacted were in English and the proceedings of all the courts were highly complicated, confusing and expensive for the Indian public, the 'English' illiterate

Indian public found it difficult to get access to the justice-delivery system. As a solution, the need to have lawyers was felt as an effective mediator between the legal world and the common man. Therefore, we can see that a lawyer in addition to being champion at the various laws also has a social responsibility of helping the ignorant and the underprivileged to attain justice.

1.42 Article 39A of the constitution provides for equal justice and free legal aid. The said article obligates the State to promote justice on a basis of equal opportunity and, in particular, provide free legal aid by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justices are not denied to any citizen by reason of economic or other disabilities.

Reforms at the village level

1.71 The Gram Nyayalayas Bill has been enacted to set up more trial courts at the intermediate Panchayat level. The welcome feature is that the procedures have been kept simple and flexible so that cases can be heard and disposed of within six months. It is also envisaged that these courts will be mobile, to achieve the goal of bringing justice to

people's doorsteps. Training and orientation of the judiciary, especially in frontier areas of knowledge, like bio-genetics, IPR and cyber laws, need attention.

1.72 The Constitutional promise of securing to all its citizens, justice, social, economic and political, as promised in the Preamble of the Constitution, cannot be realized, unless the three organs of the State i.c. legislature, executive and judiciary, join together to find ways and means for providing the Indian poor, equal access to its justice system

1.75 We need:

- Speedy justice
- Reduction in costs of litigation
- Systematic running of the courts
- Faith in the judicial system

At the end, the Law Commission made seven "**recommendations**", which reads as under:

2.1 Hon'ble Shri Justice Asok Kumar Ganguly, a Supreme Court Judge, in his article titled "Judicial Reforms" published in Halsbury's Law monthly of November 2008 has suggested a few norms, which the Judges and lawyers must agree to follow very

rigorously, in order to liquidate the huge backlog. The suggestions are quoted below:

> (1) There must be full utilization of the Court working hours. The Judges must be punctual and lawyers must not be asking for adjournments, unless it is absolutely necessary. Grant of adjournment must be guided strictly by the provisions of Order 17 of the Civil Procedure Code.
>
> (2) Many cases are filed on similar points and one judgment can decide a large number of cases. Such cases should be clubbed with the help of technology and used to dispose other such cases on a priority basis; this will substantially reduce the arrears. Similarly, old cases, many of which have become infructuous, can be separated and listed for hearing and their disposal normally will not take much time. Same is true for many interlocutory applications filed even after the main cases are disposed of. Such cases can

be traced with the help of technology and disposed of very quickly.

(3) Judges must deliver judgments within a reasonable time and in that matter, the guidelines given by the apex Court in the case of *Anil Rai vs. State of Bihar, (2001)7 SCC 318* must be scrupulously observed, both in civil and criminal cases.

(4) Considering the staggering arrears, vacations in the higher judiciary must be curtailed by at least 10 to 15 days and the Court working hours should be extended by at least half-an-hour.

(5) Lawyers must curtail prolix and repetitive arguments and should supplement it by written notes. The length of the oral argument in any case should not exceed one hour and thirty minutes, unless the case involves complicated questions of law or interpretation of Constitution.

(6) Judgments must be clear and decisive and free from ambiguity, and should not generate further litigation. We must remember Lord Macaulay's statement made about 150 years ago.

"Our principle is simply this-
Uniformity when you can have it,
Diversity when you must have it,
IN all cases, Certainty"

(7) Lawyers must not resort to strike under any circumstances and must follow the decision of the Constitution Bench of the Supreme Court in the case of *Harish Uppal (Ex-Capt.) vs. Union of India* reported in *(2003)2 SCC 45.*

80. The Division Bench of this Court in the case of ***E.Ram Mohan Chowdry vs. Registrar General, High Court of Karnataka***, reported in ***AIR 2008 KAR 195***, while considering the provisions of Section 51(3) of the States Reorganization Act, 1956, at paragraph 7 held as under:

"7. In the case of *Narayan Shamrao Puranik* (supra), the notification issued by the Chief Justice of Bombay

High Court, in exercise of the power under Section 51(3) of the Act, with the prior approval of the Governor of Maharashtra, directing that the Judges and Division Courts of the High Court of Bombay, will sit also at Aurangabad, with effect from August 27, 1981 for the disposal of cases arising out of the Marathwada region of the State of Maharashtra which was struck down by the Bombay High Court by its judgment dated 14-12-1981, was the subject matter of consideration. Interpreting Section 51(3) of the Act, it was held by the Hon'ble Supreme Court as follows:

> "25. ..... In contrast, the power of the Chief Justice to appoint under sub-section (3) of Section 51 of the Act the sittings of the Judges and Division Courts of the High Court for a new State at places other than the place of the principal seat or the Permanent Bench is in the unquestioned domain of the Chief Justice, the only condition being that he must act with the approval of the Governor. It is basically an internal matter pertaining to the High Court, he has full power, authority and jurisdiction in the matter of allocation of business of the High Court

which flows not only from the provision contained in sub-section (3) of Section 51 of the Act but inheres in him in the very nature of things. The opinion of the Chief Justice to appoint the seat of the High Court for a new State at a place other than the principal seat under sub-section (3) of Section 51 of the Act must therefore normally prevail because it is for the more convenient transaction of judicial business. The non obstante clause contained in sub-section (3) of Section 51 gives an overriding effect to the power of the Chief Justice. There is no territorial bifurcation of the High Court merely because the Chief Justice directs under sub-section (3) of Section 51 of the Act that the Judges and Division Courts shall also sit at such other places as he may with the approval of the Governor, appoint. It must accordingly be held that there was no territorial bifurcation of the Bombay High Court merely because the Chief Justice by the impugned notification issued under sub-section (3) of Section 51 of the Act directed that the Judges and Division

> Courts shall also sit at Aurangabad. The Judges and Division Courts at Aurangabad are part of the same High Court as those at the principal seat at Bombay and they exercise jurisdiction as Judges of the High Court of Bombay at Aurangabad. The Chief Justice acted within the scope of his powers. We see no substance in the charge that the impugned notification issued by the Chief Justice under sub-section (3) of Section 51 of the Act was a colourable exercise of power."

(Emphasis supplied by us)

Noticing the decision of the Bombay High Court in the case of *Seth Manji Dana* v. *C.I.T., Bombay* in Civil Appeal No. 995 of 1957, decided on July 22, 1958 and the Full Bench decision of the Kerala High Court in the case of *Manickam Pillai Subbayya Pillai* v. *Assistant Registrar*, High Court, Kerala, Trivandrum, AIR 1958 Ker 188, the Hon'ble Supreme Court has held as follows:

> "27. In *Manickam Pillai case*, the Kerala High Court held that the curtailment of the territorial jurisdiction of the main seat of the High Court of a new State is a necessary concomitant to the

establishment of a Permanent Bench under sub-section (2) of Section 51 of the Act while contrasting sub-section (3) with sub-section (2). There, a question arose whether the temporry Bench of the High Court of Kerala with its principal seat at Ernakulam created by the Chief Justice at Trivandrum by an order issued under sub-section (3) of Section 51 of the Act was not the High Court of Kerala, and the Judges and Division Courts sitting at Trivandrum were precisely in the same position as Judges and Division Courts sitting in the several court-rooms of the High Court at its principal seat in Ernakulam. In other words, the contention was that the Judges and Division Courts sitting at Trivandrum could only hear and dispose of such cases as were directed to be posted before them by the Chief Justice but no new case could be instituted there. Raman Nayar, J. (as he then was) speaking for the Court held that the Trivandrum Bench was not the High Court of Kerala and the Judges and Division Courts sitting at Trivandrum could hear

> and dispose of only such cases as may be assigned to them. With respect, we are of the opinion that the view expressed by Chagla. C.J. in *Manji Dana case*, is to be preferred. Chagla, C.J., rightly observes that the Judges and Division Courts at a temporary Bench established under sub-section (3) of Section 51 of the Act function as Judges and Division Courts of the High Court at the principal seat, and while so sitting at such temporary Bench they may exercise the jurisdiction and power of the High Court itself in relation to all the matters entrusted to them."
>
> (Emphasis supplied by us)

Hon'ble Supreme Court has concluded as follows:

> 28. …… order passed by the High Court is set aside and the writ petition filed by respondent 1 is dismissed. In terms of the Order passed by us on May 4, 1982 ((1982) 2 SCC 440), we direct that in accordance with the notification issued by the Chief Justice of High Court of Bombay dated August 27, 1981. The sittings of the Judges and Division Courts may be held and continue to be held at

> Aurangabad with full and normal powers to entertain and dispose of all matters arising out of the Marathwada region, that is to say, the area comprising the districts of Aurangabad, Bhir, Jalna, Nanded, Osmanbad and Parbani. All cases pertaining to that region and pending as on May 4, 1982 at the main seat of the High Court at Bombay shall be dealt with and disposed of as the Chief Justice of the High Court may direct, consistently with the terms of the aforesaid notifiction dated August 27, 1981."

(Emphasis supplied by us)

Hence, it is apparent that, by virtue of the power conferred on the Chief Justice under sub-section (3) of Section 51 of the Act, the Chief Justice can establish a Bench or Benches, at such place or places where the Judges and Division Courts may sit and that he has the power and authority to issue administrative directions for the filing of cases or institution of proceedings at such place or places. By that process, there will be no territorial bifurcation of the High Court of Karnataka, merely because of the arrangement made in terms of the impugned notification. Hon'ble Supreme Court in the case

of *State of Rajasthan* v. *Prakash Chand* reported in (1998) 1 SCC 1 : (AIR 1998 SC 1344) has held that, the Hon'ble Chief Justice of the High Court has the prerogative to distribute the business of the High Court, both judicial and administrative, that the Chief Justice is the Master of the Roster and that he alone has the right and power to decide how the Benches of the High Court are to be constituted, which Judge has to sit along and which cases he can and as required to hear and also as to which judges shall constitute a Division Bench and what work those Benches shall do. In exercise of the said prerogative, right and power, if the Chief Justice of the High Court of Karnataka has directed that cases arising from certain districts shall be heard and decided by the Judges sitting at a particular Circuit Bench, it cannot held to be wrong or illegal. There is nothing wrong in specifying that new cases arising from certain districts shall be filed at the particular Circuit Bench, as those cases are to be, heard and decided by the Judges sitting at that Circuit Bench. Such an arrangement, is for administrative convenience and the advantage of the litigants. After all, the Courts are for the benefit of the litigant public and hence their convenience should be the paramount consideration. The impugned notification is a positive

and concrete step to achieve the goal of providing easy and less expensive access to justice."

81. The Hon'ble Supreme Court while considering the provisions of Articles 32 and 226 of the Constitution of India, with regard to Public Interest Litigation, in the case of ***The Janata Dal vs. H.S. Chowdhary*** reported in ***AIR 1993 SC 892*** at paragraphs 96, 107, and 108, held as under:

> ***"96.*** *While this Court has laid down a chain of notable decisions with all emphasis at their command about the importance and significance of this newly-developed doctrine of PIL, it has also hastened to sound a red alert and a note of severe warning that courts should not allow its process to be abused by a mere busybody or a meddlesome interloper or wayfarer or officious intervener without any interest or concern except for personal gain or private profit or other oblique consideration.*
>
> ***107.*** *It is thus clear that only a person acting bona fide and having sufficient interest in the proceeding of PIL will alone have a locus standi and can approach the court to wipe out the tears of the poor and needy, suffering from violation of their*

fundamental rights, but not a person for personal gain or private profit or political motive or any oblique consideration. Similarly, a vexatious petition under the colour of PIL brought before the court for vindicating any personal grievance, deserves rejection at the threshold.

108. *It is depressing to note that on account of such trumpery proceedings initiated before the courts, innumerable days are wasted which time otherwise could have been spent for the disposal of cases of the genuine litigants. Though we are second to none in fostering and developing the newly invented concept of PIL and extending our long arm of sympathy to the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated and whose grievances go unnoticed, unrepresented and unheared; yet we cannot avoid but express our opinion that while genuine litigants with legitimate grievances relating to civil matters involving properties worth hundreds of millions of rupees and criminal cases in which persons sentenced to death facing gallows under untold agony and persons sentenced to life imprisonment and kept in incarceration for long years, persons suffering from the undue delay in*

service matters, Government or private persons awaiting the disposal of tax cases wherein huge amounts of public revenue or unauthorised collection of tax amounts are locked up, detenus expecting their release from the detention orders etc. etc. — are all standing in a long serpentine queue for years with the fond hope of getting into the courts and having their grievances redressed, the busybodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no public interest except for personal gain or private profit either for themselves or as proxy of others or for any other extraneous motivation or for glare of publicity break the queue muffling their faces by wearing the mask of public interest litigation, and get into the courts by filing vexatious and frivolous petitions and thus criminally waste the valuable time of the courts and as a result of which the queue standing outside the doors of the Court never moves which piquant situation creates a frustration in the minds of the genuine litigants and resultantly they lose faith in the administration of our judicial system."

82. The Hon'ble Supreme Court, while considering the Public Interest Litigation under Articles 32 and 226 of the Constitution of India, in the case of ***State of Uttaranchal vs.***

Balwant Singh Chauful and others reported in ***(2010) 3 SCC 402***, at paragraphs 181 issued directions as under:

> ***"181.*** *We have carefully considered the facts of the present case. We have also examined the law declared by this Court and other courts in a number of judgments. In order to preserve the purity and sanctity of the PIL, it has become imperative to issue the following directions:*
>
> > *(1) The Courts must encourage genuine and bona fide PIL and effectively discourage and curb the PIL filed for extraneous considerations.*
> >
> > *(2) Instead of every individual Judge devising his own procedure for dealing with the public interest litigation, it would be appropriate for each High Court to properly formulate rules for encouraging the genuine PIL and discouraging the PIL filed with oblique motives. Consequently, we request that the High Courts who have not yet framed the rules, should frame the rules within three months. The Registrar General of each High Court is directed to ensure that a copy of the rules prepared by the High Court is sent*

to the Secretary General of this Court immediately thereafter.

(3) The Courts should prima facie verify the credentials of the petitioner before entertaining a PIL.

(4) The Courts should be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL.

(5) The Courts should be fully satisfied that substantial public interest is involved before entertaining the petition.

(6) The Courts should ensure that the petition which involves larger public interest, gravity and urgency must be given priority over other petitions.

(7) The Courts before entertaining the PIL should ensure that the PIL is aimed at redressal of genuine public harm or public injury. The Court should also ensure that there is no personal gain, private motive or oblique motive behind filing the public interest litigation.

(8) The Courts should also ensure that the petitions filed by busybodies for extraneous and ulterior motives must be

discouraged by imposing exemplary costs or by adopting similar novel methods to curb frivolous petitions and the petitions filed for extraneous considerations."

83. Keeping the aforesaid principles laid down by the Hon'ble Supreme Court and the provisions of States Reorganization Act, 1956, Mysore High Court Act, 1884 and Karnataka High Court Act, 1961, and on careful perusal of the pleadings, it is pertinent to note that, except the petitioner who is a practicing advocate, no other advocates who are practicing within the jurisdiction of Dharwad and Kalaburagi-consisting of 12 Districts (110 talukas) or none of the litigants have any grievance about establishment of Circuit/Permanent Benches and none of the Bar Associations at Taluka and District places including Dharwad and Kalaburagi have any grievance. A careful perusal of the pleadings in the writ petition filed by the petitioner is mainly on the basis of Jaswantsingh report and the dictum of the Hon'ble Supreme Court in the case of *Federation of Bar Association in Karnataka.* In the said case, the Hon'ble Supreme

Court while considering the report submitted by the five Judges committee constituted by the then Hon'ble Chief Justice of Karnataka and while exercising powers under Article 32 of the Constitution held that the High Court is the best suited machinery to decide whether it is necessary and feasible to have a bench outside the principal seat of that High Court. The said judgment is based on the report submitted by the committee and there is no bar for the Chief Justice to decide whether it is necessary and feasible to have a Bench outside the principal seat of the High Court. The petitioner has not gone through the subsequent report of the Justice G.C.Bharuka Committee and the representations made by the President of Bar Association, Dharwad and the recommendation made by Hon'ble Chief Minister of Karnataka, and approval by His Excellency the Governor of Karnataka and cabinet, Central Government and Chief Justice of India. Distance of the geographical areas, demography and other criteria and disparities in facilities, non fulfilling of the long time cherished desire of the people of northern Karnataka and greater anguish and frustration is not noticed by the petitioner and has filed the present writ petition

against the "**will of public at large,"** especially against the citizens of northern Karnataka, as the petitioner is the resident of Bengaluru. Without knowing the topography, problems faced by the public at large the present writ petition is filed for his personal glory and gain. Thereby, absolutely there is no public interest made out in the present writ petition and in fact, "it is against the public interest and against the people starving for justice, ignoring the dictums of this Court and the Hon'ble Supreme Court." Only a person acting bonafide and having sufficient interest in the proceeding of PIL will alone have *locus standi* and can approach the court to wipe out the tears of poor and needy, suffering from violation of their fundamental rights. Admittedly, though the present writ petition is filed as a Public Interest Litigation, after going through the pleadings and material placed on record, "it appears that this is nothing but to bring the tears in the eyes of poor and needy who are suffering from the violation of fundamental rights and starving for justice." Thereby, the PIL brought before this Court is either for personal gain of the petitioner or at the instance of somebody to ensure the struck down of the establishment of the Circuit/permanent

benches at Dharwad and Kalaburagi, deserves rejection at the threshold.

84. It is well settled that when people are aware of their rights, their desire to get the rights realised is enhanced and they would like to knock at the doors of the Court to shape their aspiration into reality. Therefore, establishment of Dharwad and Gulbarga Benches is the need of an hour and is a basic requirement during the year 2008. The idea of speedy and quality justice dispensation system cannot be treated with *status quoist* approach. The consumers of justice expect prompt and effective delivery of justice in an atmosphere that is acceptable. Therefore, infrastructure enhancement will go a long way in strengthening functioning of the court and would improve the productivity in the justice delivery system. A court complex is not just a building. It is the building of justice which breathes and infuses life into the exalted and sublime ideals of justice. The widening gap between the ideal and the real and between the vision and the pragmatic realisation of justice has to be bridged by proper access to justice for all. The said aspect of

the matter was not considered in the proper perspective by the petitioner, who filed the present PIL. The present writ petition is against the interest of the public at large. Therefore, the petitioner is not entitled to any relief before this Court under the extraordinary jurisdiction of this Court.

85. Deprivation of personal liberty without ensuring speedy trial is not consistent with Article 21 of the Constitution of India. While deprivation of personal liberty for some period may not be avoidable, period of deprivation pending trial/appeal cannot be unduly long. "At the same time, timely delivery of justice is part of human rights and denial of speedy justice is threat to public confidence in the administration of justice. As held by the Hon'ble Supreme Court and this Court, the liberty guaranteed in part III of the Constitution would cover within its protective ambit not only due procedure and fairness, but also access to justice and a speedy trial is imperative."

86. This Court directed the Registrar General, High Court of Karnataka, to furnish the details and statistics pertaining to constitution of Dharwad and Kalaburagi benches from the date of

establishment till date. The Statement showing the pendency of Civil and Criminal Cases in the High Court of Karnataka, Dharwad and Kalaburagi Benches, from 2008 till 28.02.2023, is as under:

Years	Dharwad Bench			Kalaburagi Bench		
	Civil	Criminal	Total	Civil	Criminal	Total
2008	18401	2365	20766	7301	862	8163
2009	34417	3089	37506	13696	963	14659
2010	48566	3848	52414	16538	1177	17715
2011	37096	1794	38890	12785	1244	14029
2012	40374	2088	42462	15742	1040	16782
2013	38076	2020	40096	15653	968	16621
2014	41648	2712	44360	17032	1315	18347
2015	44231	3446	47677	20254	1299	21553
2016	52755	3424	56179	22883	1477	24360
2017	59700	4384	64084	27608	1736	29344
2018	66333	5222	71555	30477	1687	32164
2019	72876	6188	79064	30343	2068	32411

2020	53056	6021	59077	20814	2198	23012
2021	48919	6233	55152	21158	1675	22833
2022	52190	6567	58757	22908	1844	24752
2022 (UP TO 28.02.2023	51946	6640	58586	23898	1708	25606

The amount spent annually for infrastructure and maintenance of buildings at Dharwad Bench from 2007-2008 till 2022-23 is as under:

Dharwad		Amount in Rupees
Towards infrastructure	H/A:4059	35,13,58,135.68
	H/A:4216	29,72,91,779.10
Towards maintenance	H/A:2059	16,99,53,844.22
	H/A:2216	11,77,17,416.71
TOTAL		**93,63,21,175.71**

The amount spent annually for infrastructure and maintenance of buildings at Kalaburagi Bench from 2007-2008 till 2022-23 is as under:

Kalaburagi		Rupees in lakhs
Towards infrastructure	H/A:4059	9576.54
	H/A:4216	264.35
Towards maintenance	H/A:2059	1890.32
	H/A:2216	875.75
TOTAL		12606.96

As per the Memo dated 20.03.2023 No.HCE 80/2018, duly signed by Assistant Registrar, number of employees employed both Dharwad and Kalaburagi benches:

	Sanctioned strength	Working strength
Dharwad	242	325
Kalaburagi	242	193

As per consolidated statement of expenses incurred by Dharwad and Kalaburagi benches from the financial year 2008-2009 till 2022-2023 as per the information furnished on 18.03.2023 is as under:

Expenditure incurred by Dharwad Bench	Rs.1,486,149,833
Expenditure incurred by Kalaburagi Bench	Rs.1,189,781,691

The approximate expenditure incurred towards salary, allowances, etc., of the Hon'ble Judges sitting at Dharwad and Kalaburagi Benches from the period from July 2008 to March 2003 (under the head of account: 2014-00-102-0-01) is:

Dharwad Bench	Rs.16,35,31,600
Kalaburagi Bench	Rs.3,19,54,800

The approximate expenditure of travelling and daily allowances in respect of Hon'ble Judges is:

Dharwad Bench	Rs.63,937,701
Kalaburagi Bench	Rs.39,373,660

Approximate expenditure incurred towards salary, allowances etc., paid to Officers/officials for the period from July 2008 till March 2023 is:

Dharwad Bench	Rs.1570685105
Kalaburagi Bench	Rs.1002980707

Approximate expenditure incurred towards travelling allowance and daily allowances paid to Officers/officials for the period from July 2008 till March 2023 is:

Dharwad Bench	Rs.9,780,059.00
Kalaburagi Bench	Rs.7,110,357.00

87. In pursuance of the order dated 3.3.2023 passed by this Court, the Registry of High Court of Karnataka has furnished the details by way of memo dated 23.3.2023 alongwith Annexures-A to E/statements. The statement produced at Annexure-A clearly indicate that at the inception of establishment of Circuit Benches in the year 2008, **20,766 cases** (18401 civil cases and 2365 criminal cases) were pending in the Dharwad Bench and **25606 cases** (23898 civil cases and 1708 criminal cases) were pending in the Kalaburagi Bench. "The pendency statement also depicts that as on 28.2.2023, **58,586 cases** (51946 civil cases and 6640 criminal cases) were

pending in the Dharwad Bench and **25,606 cases** were pending in the Kalaburagi Bench. These figures clearly indicate that from the year 2008 till 28.2.2023, filing of both civil and criminal cases have increased in view of establishment of Benches in the northern Karnataka. As the Courts came to their doorsteps, the awareness of legal rights has increased in the citizens of north Karnataka and accordingly, the litigants approached the Courts with great expectation for speedy and qualitative justice. Today, the judiciary is repository of public faith. It is the trustee of the people. It is the last hope of the people. After every knock at all the doors fail people approach the judiciary as the last resort. It is the only temple worshipped by every citizen of this nation, regardless of religion, caste, sex or place of birth."

88. The statements furnished by the Registry of the High Court of Karnataka at Annexures-B and B1 clearly depict that the State Government spent **Rs.93,63,21,175=71 at Dharwad Bench** and **12,606.96 lakhs** at Kalaburagi Bench for infrastructure and maintenance of buildings from the year 2007-08 to 2022-23. Further, the information furnished by the

Registry as per Annexure-C depicts that the working strength of officers/officials at Dharwad and Kalaburagi Benches is 325 and 193 respectively. Annexure-E depicts that the expenditure incurred to Dharwad and Kalaburagi Benches from 2008-09 to 2022-23 is Rs.1,486,149,833/- and Rs.1,189,781,691/- respectively.

Further, the information furnished by the Registry of High Court of Karnataka by way of memo dated 11th April 2023 indicates that the approximate expenditure incurred towards salary, allowances etc., of the Hon'ble Judges sitting at Dharwad and Kalaburagi Benches from July-2008 till March-2023 is Rs.16,35,31,600/- and Rs.3,19,54,800/- respectively. The approximate expenditure of traveling and daily allowances of Hon'ble Judges sitting at Dharwad and Kalaburagi Benches is Rs.63,937,701/- and Rs.39,373,660/- respectively. The approximate expenditure incurred towards salary, allowances etc, to the officers/officials working in Dharwad and Kalaburagi Benches from 2008 till March-203 is Rs.1570685105/- and Rs.1002980707/- respectively. The approximate expenditure

incurred towards travelling allowance and daily allowances to the officers/officials working in Dharwad and Kalaburagi Benches during the above period is Rs.9,780,059/- and Rs.7,110,357/- respectively.

89. The constitutional authorities taking into consideration various factors and in the interest of litigant public at large has established Circuit Benches at Dharwad and Gulbarga, which later converted into permanent benches. Government has spent crores of rupees for establishing the Circuit Benches at Dharwad and Gulbarga as stated supra and the citizens of North Karnataka are agitating their rights before the said Courts and getting timely justice to their door steps. The distance from Bangalore (which is the principal seat of the High Court of Karnataka) to various district centres of North Karnataka ranges between 425-613 kilometers and hence litigants from all those districts have to travel a long distance to reach the principal seat of the High Court at Bangalore and it is highly expensive besides being time-consuming for such seekers of justice. In the circumstances, it is not open for the petitioner

to contend that the establishment at Kalaburagi and Dharwad is futile exercise. Infact lakhs of people are benefited by the establishment of the Courts at Dharwad and Kalaburagi and the people of north Karnataka are happy as the Courts are established at their doorsteps and as a result, the litigants need not travel long distances spending huge expenses. The establishment of Benches at Dharwad and Gulbarga should not be construed as an investment for returns at all, but should only be taken as "*Pro Bono Publico* measure." It is the duty of the State Government/constitutional authorities to help the litigants and absolutely there is no profit motive and the establishment of Benches at Dharwad and Gulbarga is a "public welfare measure." Establishment of courts benefit the litigant public and justice delivery at the doorstep is the objective of the State. Admittedly, the circuit benches were established in the year 2008 and now we are in the year 2023 and more than 14 years has elapsed and the citizens of North Karnataka are happy to urge their rights in the courts established near their doorsteps and the clock of the judicial system at Dharwad and Kalaburagi is complete.

90. The High Court is the best suited machinery to decide whether it is necessary and feasible to have a bench outside the principal seat of that High Court as held by the Hon'ble Supreme Court in the case of Federation of Bar Associations in Karnataka –vs- Union of India reported in (2000)6 SCC 715. In the present case, the then Chief Justice constituted seven members committee to look into the matter and majority of five judges supported the establishment of circuit Benches and the Hon'ble Chief Justice recommended for establishment of circuit benches. Accordingly, in consultation with the State Government and the Chief Justice of India, the President of India passed necessary orders and the same is in accordance with law and the petitioner is not entitled to any relief in the present writ petition.

XI - <u>Regarding the judgments relied upon by the learned counsel for the petitioner</u>

91. (i) Insofar as the judgment relied upon by the learned counsel for the petitioner in the case of ***Federation Bar Associations in Karnataka -vs- Union of India*** reported in

(2000)6 SCC 715, it was a case where a Committee of five Judges constituted by the then Chief Justice of Karnataka High Court submitted a report in June-2000 disfavouring the proposal for establishment of a separate Bench away from the principal seat of the High Court and the same was agreed by the Hon'ble Chief Justice and that was challenged before the Hon'ble Supreme Court by Federation of Bar Associations in Karnataka, which came to be dismissed on the ground that establishment of a Bench of the High Court away from Bangalore is inadvisable, but observed that High Court is the best suited machinery to decide whether it is necessary and feasible to have a bench outside the principal seat of that High Court. Admittedly, Federation of Bar Associations in Karnataka is not a party to the present proceeding and the said judgment does not bar the Hon'ble Chief Justice of the High Court to constitute the new committee and also for establishment of circuit benches/permanent Benches outside the principal seat of the High Court. In the present case, subsequently majority of seven-member committee favoured establishment of benches and same was agreed by the Hon'ble Chief Justice , thereby the

said judgment has no application to the facts and circumstances of the present case.

(ii) In the case of **S.R. Bhagwat -vs- State of Mysore** reported in AIR 1996 SC 188, the Hon'ble Supreme Court while considering Article-246 of the Constitution of India held that Section 11(2) of Karnataka State Civil Services (Regulation of Promotion, Pay and Pension) Act, 1975 tries to do away with judgments, decrees and orders of any Court which has become final against the State and such exercise of power is impermissible. In the present case, the judgment in the case of ***Federation of Bar Association*** is based on the committee report and not on any final decision taken by the jurisdictional authorities. Therefore, the judgment in the case of **S.R. Bhagwat** is not applicable to the peculiar facts and circumstances of the case.

(iii) In yet another judgment relied upon by the learned counsel for the petitioner in the case of ***Union of India -vs- K.M. Shankarappa*** reported in (2001)1 SCC 582, the Hon'ble Supreme Court held that a judicial pronouncement cannot be

malafide by the Executive or the Legislature. We have no dispute with regard to the law laid down by the Hon'ble Supreme Court, but in the present case, there is no judicial pronouncement not to establish the circuit benches at Dharwad and Kalaburagi for ever.

(iv) Learned counsel for the petitioner relied upon Fourth Report of Law Commission of India, wherein it is observed that the structure and composition of the Courts should not be permitted to be influenced by political considerations and that this has happened in the past in certain cases can be no valid ground for the extension of that policy. Therefore, learned counsel submits that setting of Benches at different seats is undesirable. In this regard, Deputy Solicitor General of India has produced Government of India – Law Commission of India Report No.230, where the Law Commission was constituted consisting of Chairman, Member Secretary and others and it has given some suggestions for reforms in the Judiciary. In the report, it is stated that a speedy trial is not only required to give quick justice, but it is also an integral part of fundamental right

of life, personal liberty as envisaged in Article 21 of the Constitution. Traditional concept of 'access to justice' as understood by common man is access to Courts of Law. For a common man, a Court is a place where justice is meted out to him/her. A lawyer in addition to being champion at the various laws also has a social responsibility of helping the ignorant and the unprivileged to attain justice. Article 39A of the Constitution of India provides for equal justice and free legal aid. It obligates the State to promote justice on a basis of equal opportunity and in particular provide free legal aid by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justices are not denied to any citizen by reason of economic or other disabilities. The report further emphasises that the constitutional promise of securing to all its citizens, justice, social, economic and political as promised in the Preamble of the Constitution, cannot be realised, unless three organs of the State i.e., Legislature, Executive, Judiciary, join together to find ways and means for providing the Indian poor, equal access to its justice system. The report further emphasises need of:

- Speedy justice
- Reduction in cost of litigation,
- Systematic running of the courts
- Faith in judicial system and Other recommendations.

Thereby, the latest report of the Law Commission of India in August, 2009 prevails than the reports relied upon by the learned Counsel for the petitioner.

(v) The other judgments relied upon by the learned Counsel for the petitioner are: (i) ***South India Corporation-vs- Secretary, Board of Revenue reported in AIR 1964 SC 207*** and (ii) ***Petroleum and National Gas Regulatory Authority -vs- Indraprastha reported in AIR 2015 SC 2978*** with regard to reasonable interpretation of the constitutional provisions of Section 69 of the State Re-organisation Act, we have no quarrel, but the said judgments have no application to the facts and circumstances of the present case.

(vi) Another judgment relied upon by the learned Counsel for the petitioner in the case of ***Manickam Pillai Subbayya***

Pillai -vs- Assistant Registrar, High Court, Kerala, Trivandrum reported in 1958 Kerala 188, to the effect that that in view of Section 51(3) SR Act, there cannot be a separate registry for establishment of Circuit Bench, which was dealt and negatived in the ***State of Maharastra*** stated supra by the Apex Court at paragraph-27 wherein it was held as under:

> *"27. the curtailment of the territorial jurisdiction of the main seat of the high Court of a new State is a necessary concomitant to the establishment of a permanent bench under sub-section (2) of Section 51 of the Act while contrasting sub-section (3) with sub-section (2). There, a question arose whether the temporary Bench of the High court of Kerala with its principal seat at Ernakulam created by the Chief Justice at Trivandrum by an order issued under sub-section (3) of Section 51 of the Act was not the high Court of Kerala, and the Judges and division Courts sitting at Trivandrum were precisely in the same position as Judges and division Courts sitting in the several courtrooms of the High Court at its principal seat in Ernakulam. In other words, the contention was that the Judges and Division*

Courts sitting at Trivandrum could only hear and dispose of such cases as were directed to be posted before them by the Chief Justice but no new case could be instituted there. Raman nayar, J. (as he then was) speaking for the court held that the Trivandrum Bench was not the High Court of Kerala and the Judges and division Courts sitting at Trivandrum could hear and dispose of only such cases as may be assigned to them. With respect, we are of the opinion that the view expressed by Chagla. C. J. in Manii Dana case, is to be preferred. Chagla. C. J. rightly observed that the Judges and Division Courts at a temporary Bench established under sub-section (3) of Section 51 of the Act function as Judges and Division courts of the High Court at the principal seat. and while so sitting at such temporary Bench they may exercise the jurisdiction and power of the High Court itself in relation to all the matters entrusted to them. "

Admittedly in the present case as already stated supra, the Circuit Benches at Dharwad and Kalaburagi subsequently made as Permanent Benches are part and parcel of Principal Bench of High Court of Karnataka at Bengaluru and only one Registrar

General is working for all the three Benches, except appointing Additional Registrars at the Benches. Thereby, the said judgment has no application to the facts and circumstances of the present case.

(vii) Though the learned Counsel for the petitioner at one breadth states that the provisions of S.R. Act is applicable, but at another breadth states that after 47 years, the provisions of S.R. Act are not applicable and placed reliance on the judgments of the Hon'ble Supreme Court in the case of ***Municipal Corporation for City of Pune and Another -vs- Bharat Forge Co. Ltd., and Others reported in AIR 1996 SC 2856*** and in the case of ***State of MP -vs- Bhopal Sugar Industries Ltd., reported in AIR 1964 SC 1179***, but the said judgments have no application to the facts and circumstances of the present case in view of the specific reasons stated supra.

(viii) The other two judgments in the case of ***Shri Swamiji of Shri Admar Mutt, etc., -vs- The Commissioner, Hindu Religious and Charitable Endowments Dept and Others reported in AIR 1980 SC 1*** to the effect that the

provisions of S.R. Act cannot be applied for temporary measure or temporary purpose as well as in the case of ***Motor General Traders and Another -vs- State of A.P. and Others reported in AIR 1994 SC 121(1).***

92. As already stated supra, all the demands made by the citizens of North Karnataka, the then Chief Justice constituted a Committee of 7 members, the committee has taken pains to visit all the places after considering the pros and cons, and considering Justice Jaswanth Singh Commission Report and the judgments of the Hon'ble Supreme Court, President of Bar Association opined that there was a necessity to constitute Circuit Benches both at Dharwad and Kalaburagi and subsequently made as Permanent Benches and the said Benches as part and parcel of the Principal Seat, Bengaluru High Court and thereby the said judgments have no application to the facts and circumstances of the present case.

93. With regard to other judgments relied upon by the learned Counsel for the petitioner, in view of the peculiar facts and circumstances of the present case and the fact that the

Circuit Benches have become Permanent Benches and are working for more than 14 years providing speedy and timely access to justice to the citizens of the Northern Karnataka, they have no application to the facts and circumstances of the present case.

94. The Hon'ble Supreme Court in the case of ***Dattaraj Nathuji Thaware -vs- State of Maharashtra and Others reported in AIR 2005 SC 540*** held that the petitioner, who comes to the Court for reliefs in interest must come not only with clean hands like any other writ petitioner, but also with a clean heart, clean mind and clean objective and further observed that, it is high time for the Bar Councils and Bar Associations to ensure that no Member of the Bar becomes party as the petitioner or in aiding and/or abetting filing frivolous petitions, carrying the attractive brand name of 'Public Interest Litigation'.

95. In view of the above dictum, the petitioner is not entitled for any relief before this Court and the writ petition is liable to be dismissed.

96. The Hon'ble Supreme Court in the case of ***R.N. Godavarman Thirumalpad -vs- Union of India reported in AIR 2006 SC 1774*** held that a person acting bonafide alone can approach the Court in public interest. Such a remedy is not open for unscrupulous person, who acts, in fact, for someone else. In the peculiar facts and circumstances of the present case, we see no bonafide on the part of the petitioner that too a practicing advocate of this Court to file a public interest litigation, infact, it is against public interest at large, who were starving for tension free life through speedy justice delivery system and access to justice. On that ground also, the writ petition is liable to be dismissed.

97. It is relevant to state at this stage that the establishment of Benches at Dharwad and Kalaburagi ensures speedy and qualitative justice to the needy citizens of North Karnataka to their door steps, creates an opportunity to the many young advocates to excel themselves by assisting the Hon'ble Judges in achieving the object of justice delivery system and after establishment of Circuit Benches at Dharwad and

Kalaburagi, the accomplished advocates have been elevated as Hon'ble Judges of this Court and thereby, distributive justice has been rendered to all the regions. Therefore, the establishment of Circuit Benches - Permanent Benches at Dharwad and Kalaburagi has fulfilled the object of Preamble of the Constitution of India.

XIII - CONCLUSION

98. For the reasons stated above, the points raised in the present writ petition is answered in the negative holding that the petitioner has not made any public interest to quash the notification dated 19.10.2014, Annexure-E and the notification dated 4.6.2008 Annexure-F issued by the Chief Justice of Karnataka and the Presidential Order dated 8.8.2013 Annexure-M issued by the President of India in exercise of powers conferred under Sub-section (2) of Section 51 of the State Re-organization Act, 1956 and the petitioner has not made out any case to issue writ of mandamus directing the 5th respondent to conduct performance audit including financial audit with regard to investment, expenditure and functional viability of the

Benches at Dharwad and Kalaburagi and it's sustenance is in public interest in exercise of extra ordinary jurisdiction of this Court under Articles 226 and 227 of the Constitution of India.

99. In view of the facts and circumstances of the present case and the petitioner, who wasted public precious time in filing frivolous public interest litigation to struck down the Benches at Dharwad and Kalaburagi, though this Court is inclined to impose heavy costs on the petitioner, but taking into consideration that the petitioner is aged about 62 years as on today and he has become senior citizen and infact earlier had filed genuine public interest litigations to protect the interest of the general public at large, we decline to impose any costs on him with an advise to the petitioner - practicing advocate to be cautious in future in filing such frivolous litigations and shall ensure to protect precious time of the Court as the Court is not anybody's personal property, but it is a Divine of Temple. People approach the Court after every knock to all the doors as a last resort. It is the temple worshipped by every citizen of this nation regardless of religion, caste, sex or place of birth.

100. The application - I.A. No.I/2016 for impleading filed by the applicant, who is the resident of Raichur in support of establishment of Dharwad and Kalaburagi Circuit Benches, does not survive for consideration as this Court has not granted any relief in favour of the petitioner. Accordingly, it has to be disposed off.

101. The services rendered by Sri V.R. Datar, learned counsel for the petitioner; Sri H. Shanthi Bhushan, Deputy Solicitor General of India for Respondent Nos.1 and 5; Sri Dhyan Chinnappa, learned Additional Advocate General a/w Sri Kiran Kumar, learned HCGP for Respondent No.4; Sri S.S. Naganand, learned senior counsel a/w Sri S.G. Prashanth Murthy and Smt. Sumana Naganand, learned counsel for Respondent Nos.2 and 3; AND Sri Karthik Yadav U, learned advocate for Sri S.K. Venkata Reddy, learned advocate for Respondent No.6, to arrive at this conclusion is appreciated and placed on record

XIV - RESULT

102. In view of the above, we pass the following:

(i) Writ Petition is dismissed as being devoid of any merit;

(ii) Consequently, I.A.1/2016 for impleading does not survive for consideration and accordingly, it is disposed off.

Sd/-
JUDGE

Sd/-
JUDGE

Para Nos.1 to 3… Nsu
14 to 51 … gss
52 to 86… Kcm
87 to 91(iv)… gss
91(v) to end … Nsu