

The birth and life of the High Court of Judicature at Allahabad.

The High Court in Allahabad was born on 18.06.1866 under the Royal Charter of Her Majesty Queen Victoria i.e. The Letters Patent¹ of 17.3.1866. It acquired its present status under the United Provinces² High Courts (Amalgamation Order) 1948 enforced w.e.f 19.07.1948.

The High Courts Act, 1861, enacted by British Parliament, provided for the replacement of Supreme Courts of Calcutta, Madras and Bombay and for the establishment of High Courts in their places. It also provided for the establishment of High Courts in any other part of Her Majesty's territories, not included in the jurisdiction of another High Court by Letters Patent.

The High Court in Allahabad was established by the Letters Patent of 17.03.1866 for the North Western Province³ replacing the old "Sudder Diwani Adalat"⁴ of Agra, which came to an end on 13.06.1866. The first Chief Justice and the Judges of the High Court of North Western Provinces at Allahabad were named in the above Letters Patent itself. For three years, during 1866 to 1869 the High Court thus formed, continued to function at Agra and it was not before the autumn of 1869 when the Chief Justice first sat at Allahabad.

In 1834, the Upper Provinces were separated from the Presidency of Bengal and a new presidency of Agra was constituted which was superseded by the North Western Provinces in 1836.

The area of North Western Provinces and the area of Oudh were named as United Provinces of Agra and Oudh in the year 1902. The whole area was placed under the jurisdiction of the Governor in 1921 on the implementation of India Constitutional Reforms. After the elections of 1920 a Legislative Council was formed at Lucknow in

1921 and Lucknow was made the Capital. The province was named "United Provinces" in 1937.

Earlier, the territories of twelve districts of Oudh, namely, Lucknow, Faizabad, Sultanpur, Rai Bareilly, Pratapgarh, Barabanki, Gonda, Behraich, Sitapur, Kheri, Hardoi and Unnao, which were under the British Crown were brought under the jurisdiction of the Judicial Commissioner of Oudh at Lucknow vide the Government of India Order dated 04.02.1865. In 1925 vide U.P. Act No.IV of 1925⁵, the Chief Court of Oudh was constituted with one Chief Justice and four puisne Judges replacing the Judicial Commissioner's Court for the above Districts.

In the above background, two courts i.e. the High Court in Allahabad for North Western Provinces and the Chief Court of Oudh at Lucknow, were simultaneously functioning and were exercising the powers of the High Courts over the respective territories. The existing two courts also referred to in Section 219 of the Government of India Act, 1935 were amalgamated and the new High Court of Judicature at Allahabad was established w.e.f. 26.07.1948 under the United Provinces High Courts (Amalgamation Order) 1948 which was issued in exercises of powers under Section 229 of the Government of India Act, 1935.

The High Court of Allahabad exercises supervisory jurisdiction and control over the subordinate judiciary by virtue of Bengal, Agra and Assam Civil Courts Act, 1887.

The Amalgamation Order 1948 in Article 3 provides that the High Court in Allahabad and the Chief Court in Oudh shall constitute one High Court by the name of the High Court of Judicature at Allahabad. Article 3 of the Amalgamation Order - 1948 is quoted

below:-

“As from the appointed day, the High Court in Allahabad and the Chief Court in Oudh shall be amalgamated and shall constitute one High Court by the name of the High Court of judicature at Allahabad (hereinafter referred to as “the new High Court”)”

A plain reading of Article 14 of the Amalgamation Order, 1948, makes it clear that the Judges of the High Court shall sit at Allahabad or at such other places as the Chief Justice may appoint with the approval of the Governor. It further provides that not less than two judges as the Chief Justice from time to time nominate, shall sit at Lucknow in order exercise jurisdiction and power in respect of cases arising in the area of Oudh territory. In other words, a seat of the new High Court of Judicature was appointed at Allahabad with another seat or bench of not less than two judges at Lucknow only for the twelve districts of Oudh area. Article 14 of the Amalgamation Order 1948 is reproduced here in below:-

“The new High Court, and the Judges and division Courts thereof, shall sit at Allahabad or at such other places in the United Provinces as the Chief Justice may, with the approval of the Governor of the United Provinces, appoint:

Provided that unless the Governor of the United Provinces with the concurrence of the Chief Justice otherwise directs, such judges of the new High Court, not less than two in number, as the Chief Justice may from time to time nominate, shall sit at Lucknow in order to exercise in respect of cases arising in such area in Oudh

as the Chief Justice may direct, the Jurisdiction and power for the time being vested in the new High Court:

Provided further that the Chief Justice may in His discretion order that any case or class of cases arising in the said areas shall be heard at Allahabad.”

The Constitution of India was enforced much later on after the formation of the High Court of Judicature at Allahabad. Thus, the High Court of judicature at Allahabad is not a creation of the Constitution of India. It owes its origin to the High Courts Act of 1861, Letters Patent of 1866 and the Amalgamation Order of 1948. The Constitution of India in no way abridges, alters or affects the authority, jurisdiction, status and the existence of the High Court of Judicature at Allahabad. It, however, affirms and approves of the High Court for each State including one for the State of U.P.⁶ Article 214 of the Constitution of India in unequivocal terms provides that there shall be a High Court for each State. Article 214 of the Constitution of India is reproduced below:-

Art. 214: “There shall be a High Court for each State.”

The place of sitting of the High Court at Allahabad, Lucknow and such other places as the Chief Justice may appoint, may not be misconstrued to mean creating a new High Court within the same State.

In a reported five judges decision of the Supreme Court of India in the case of Nasirudin Vs. State Transport Appellate Tribunal, AIR 1976 SC 331, the Hon'ble Supreme Court tracing out the history of the High Court of Judicature at Allahabad concluded that there is no permanent seat of the High Court at Allahabad. The seats at Allahabad and Lucknow may be changed in accordance with

provisions of the Amalgamation Order 1948 i.e. at the discretion of the Chief Justice with the approval of the Governor. The Chief Justice of the High Court has no power to increase or decrease the areas of the Oudh from time to time.

The Hon'ble Supreme Court in yet another case, Federation of Bar Association in Karnataka Vs. Union of India reported in JT 2000 (suppl.-2) SC 303 categorically ruled that there is no fundamental right to have a bench of the High Court at another place on the ground of distance nor the establishment of the bench can be decided on the emotional and sentimental considerations. The High Court itself is the best-suited machinery to decide whether it is necessary and feasible to have a bench outside the principal seat. When the committee of judges constituted by the Chief Justice has disfavoured the establishment of a bench, the Chief Justice cannot be pressurised to take a different stand through strikes and agitation.

⁷It is from the news papers that the present Union Minister of Law, Justice and Company Affairs had written to the Chief Justice of the Allahabad High Court seeking his opinion on the formation of a bench of the High Court in western Uttar Pradesh. The Chief Justice on consultation with ten senior most Judges of the Court had refused consent to establish another bench of the High Court, as had been done successively by the previous Chief Justices in the past.

In this context, one can not afford to loose sight of report of Justice Jaswant Singh Commission which was set up to consider the modalities, desirability and the feasibility of constituting or creating a bench of the Allahabad High Court elsewhere in the State of U.P in view of the long standing demand of a bench in western part of the State. The Commission recommended for a circuit bench at Agra from the distance point of view of the people of the hill region of the

State who were neither well connected by road or otherwise with Allahabad nor were possessed of sufficient means to travel such long distance for litigation. However, the said recommendations of the Commission lost all its significance once a separate State of Uttranchal was established by the U.P State Reorganisation Act, 2000 w.e.f. 9.11.2000 for the thirteen hill districts of the State of Uttar Pradesh, namely, Pauri Garhwal, Tehri Garhwal, Uttar Kashi, Chamoli, Dehradun, Nainital, Almora, Pithoragarh, Udham Singh Nagar, Bageshwar, Champawat, Rudra Prayag and Haridwar. A separate High Court for the State of Uttranchal was constituted on the same day under Section 26 of the Act which empowered the President to notify the place of Principal seat of the High Court and the Chief Justice of the said High Court to notify, if necessary, additional place or places of sitting of the said High Court with the approval of the Governor. Even, otherwise the said recommendations of the Commission are of no consequence as there is nothing on record publicly to show that the Government ever accepted the said report.⁷

We, all at the Bar in the noble profession of law, are judges of Judges. All men of wisdom. Let us not allow ourselves to be ruled by the savage world.

24.09.01

(Pankaj Mithal)

Note:-

(i) I am grateful to Sri Dulip Kumar my learned friend at the Bar, who prompted me to write this article and to the lawyers' strike which allowed me time to do so.

(ii) This article was first published in the newspaper Northern India Patrika of Allahabad and later it was reported in the journal section of U.P. Revenue Judgments 2001.

1. Letters Patent means open letters in the form of an instrument issued by the Sovereign conveying a right authority or grant which has the statutory force.

2. United Provinces includes Agra and Oudh and the name was changed to Uttar Pradesh w.e.f. 26.1.1950 and accordingly the High Court of Judicature, United Provinces at Allahabad was changed to High Court of Judicature, Uttar Pradesh at Allahabad.
3. North-Western Province territories later came to be known as Agra from 22.03.1902.
4. “Sudder Diwani Adalat” was constituted for the North Western Provinces under Regulation VI, 1831.
5. U.P. Act No.IV of 1925 is Oudh Courts Act, 1925.
6. State of U.P comprises of the territories, which immediately before the commencement of the Constitution were either comprised in the United Province or were being administered as part of that Province. (See First Schedule of the Constitution) w.e.f. 26.1.1950.
7. ⁷.....⁷:- Subsequently added.

References:-

1. *Regulation VI of 1831.*
2. *High Court Act, 1861.*
3. *Government of India Order, 1865.*
4. *Letters Patent of 17.3.1866*
5. *Bengal Agra & Assam Civil Courts Act, 1887.*
6. *Oudh Courts Act, 1925.*
7. *Government of India Act, 1935.*
8. *United Provinces High Courts (Amalgamation) Order, 1948.*
9. *Constitution of India.*
10. *Gazetteer of India, U.P.*
11. *District Gazetteers of the United Provinces.*
12. *Commemoration Post Centenary Silver Jubilee High Court of Judicature at Allahabad 1866-1991.*
13. *AIR 1976 SC 331.*
14. *Judgment Today 2000 (Suppl. 2) SC 303.*