REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8486 OF 2011

M/S TRIMURTHI FRAGRANCES (P) LTD. THROUGH
ITS DIRECTOR SHRI PRADEEP KUMAR AGRAWAL .....APPELLANT(S)

VERSUS

GOVT OF N.C.T OF DELHI THROUGH ITS
PRINCIPAL SECRETARY (FINANCE) & ORS. .....RESPONDENT(S)

W I T H

CIVIL APPEAL NO. 8485 OF 2011

CIVIL APPEAL NO. 8487/2011

CIVIL APPEAL NOS. 8496-8501/2011

CIVIL APPEAL NO. 8502/2011

CIVIL APPEAL NO. 8617/2014

CIVIL APPEAL NOS. 10374-10379/2014

CIVIL APPEAL NO. 8488/2011

CIVIL APPEAL NOS. 8491-8494/2011

CIVIL APPEAL NO. 8495/2011

SLP(C) NO. 33322/2017

J U D G M E N T

HEMANT GUPTA, J.

A. I entirely agree with the judgment authored by Hon. Indira Banerjee J. However, in respect of Question No.2, I would like to supplement the opinion expressed.

B. Mr. Gopal Sankaranarayanan, learned Senior Advocate referred to Article 145(5) of the Constitution to contend that a judgment of this Court is mandated to be delivered with the concurrence of a majority of the Judges present at the hearing of the case, but nothing in this clause shall be deemed to prevent a Judge who does not concur from delivering a dissenting judgment or opinion. Thus, the Constitution itself envisaged that the judgment is by the majority of the Judges.

C. A reference was made to insertion of Article 144A in the Constitution by the 42nd Amendment with effect from 01.02.1977. The amendment reads thus:

> "144-A. Special provisions as to disposal of questions relating to constitutional validity of laws – (1) The minimum number of Judges of the Supreme Court who shall sit for the purpose of determining any question as to the constitutional validity of any Central law or State law shall be seven.
>
> A. A Central law or a State law shall not be declared to be constitutionally invalid by the Supreme Court unless a majority of not less than two-thirds of the Judges sitting for the purpose of determining the question as to the constitutional validity of such law hold it to be constitutionally invalid."

D. The said amendment was undone by 43rd Amendment when Article 144-A was omitted with effect on and from 01.02.1977. Though the said insertion of Article 144-A stands repealed, but it shows that the legislature also considered majority of not less than 2/3rd of Judges should determine the question as to the constitutional validity of law. Therefore, even such amendment contemplated dissent and a minority view.

E. A similar question has been examined by a Full Bench of the High Court of Gujarat in a judgment reported as ***State of Gujarat*** v ***GordhandasKeshavji Gandhi and Ors***.[17]. The Court was considering the binding nature of the judgments of the Bombay High Court in the successor Gujarat High Court but an ancillary question was considered in respect of numerical strength of the Bench as well. Though there is divergence of opinion amongst the judges of the Court, but the minority view was relevant for the second question arising for consideration. The minority view is expressed by N.M. Miabhoy J and P.N.Bhagwati J. We are in agreement with the said view. The order passed by learned Hon'ble Mr. Justice N.M. Miabhoy J reads thus:

> "44. .....The principles which guided the latter Court in the matter of judicial precedents have been set out by that Court in (1944) 1 KB 718. All Division Benches considered themselves to be bound by the judicial precedents created by Full Benches not only on the ground of judicial comity but also on the ground that a Full Bench consisted of more number of Judges than a Division Bench. If a judicial precedent created by a Full Bench required to be reconsidered, then, the usual practice was to refer the matter to a Full Bench consisting of more number of Judges than the number which constituted the former Full Bench whose decision was sought to be revised. The practice was to regard the precedent of a larger Full Bench as having greater efficacy and binding authority than the precedent of a Full Bench consisting of a smaller number of Judges. This practice was criticised by Beaumont, C.J. in 43 Bom LR 864 at p. 868 : (AIR 1941 Bom 408 at p. 409). It is not necessary to express any opinion in this case as to whether this criticism was or was not justified. However, the observations made by the learned

17 AIR 1962 Guj 128

Chief Justice in the above case ignores the important fact that, when a *Full Bench consists of a larger number of Judges, then, the decision is not merely of a greater number of Judges, but it is one arising from out of the joint deliberations and discussions of a greater number of Judges* and that this fact may give to the decision of a Full Bench consisting of a larger number of Judges a greater binding authority than that of a Full Bench consisting of a smaller number of Judges..... In view of the observations made by Their Lordships of the Supreme Court in the aforesaid two cases[18], the view that should prevail in India is the view-that the decision of a larger Full Bench should be followed in preference to the decision of a smaller Full Bench.

xxx xxx xxx

The order passed by learned Hon'ble Mr. Justice P.N.Bhagwatireads thus:-

xxx xxx xxx

117. .....Is the subsequent Full Bench of the High Court bound to follow the decision of the previous Full Bench of the High Court, though the previous Full Bench consisted of a lesser number of Judges than the subsequent Full Bench? The question ultimately resolves itself into a narrow one, namely, how far the principle of superiority of numerical strength should be carried. If the principle of superiority of numerical strength is applied to Full Benches of the High Court whatever be the numerical strength of the Judges constituting the Full Benches, a Full Bench of four Judges would be able to override the previous decision of a Full Bench of three Judges, a Full Bench of five Judges would be able to override the previous decision of a Full Bench of four Judges and so on and so forth. Beaumont, C.J., expressed a doubt as regards the correctness of this position in 43 Bom LR 864 : (AIR 1941 Bom 408) in the following terms:—

> "……Apparently it was considered that five Judges by a majority of four to one, could overrule a unanimous decision of four Judges, the net result being that the opinion of four Judges prevailed over the opinion of five Judges of co-ordinate jurisdiction. There seems to be very little authority

18(1) AIR 1960 SC 936
(2) AIR 1960 SC 1118

> on the powers and constitution of a Full Bench.-There can be no doubt that a Full Bench can overrule a Division Bench, and that a Full Bench must consist of three or more Judges; but it would seem anomalous to hold that a later Full Bench can Overrule an earlier Full Bench, merely because the later bench consists of more Judges than the earlier. If that were the rule, it would mean that a Bench of seven Judges, by a majority of four to three, could overrule a unanimous decision of a Bench of six Judges, though all the Judges were of co-ordinate jurisdiction."
>
> ..... It was the anomaly of this situation which prompted Beaumont, C.J., to make the aforesaid observations. *This anomaly is, however, inherent in the principle of superiority of numerical strength and should not stand in the way of acceptance of that principle in its application to Full Benches of the High Court*. The same anomaly also arises when four or five Judges of the High Court, each sitting singly take one view of the law on a particular point while a Division Bench consisting of two Judges takes a different view or when three or four Division Benches, each consisting of two Judges, take one view on a point of law while a Full Bench of three Judges takes a different view. The opinion of two Judges prevails over the opinion of four or five Judges in the former case while in the latter case the opinion of three Judges prevails over the opinion of eight or ten Judges, though all the Judges are of co-ordinate jurisdiction. This anomaly cannot, therefore, be a valid argument against the application of the principle of superiority of numerical strength amongst Full Benches of the High Court. The principle of superiority of numerical strength is a principle which, as I have already pointed out above, imparts flexibility to the law and provides an easy machinery within the framework of the High Court itself for correction of erroneous decisions which would otherwise stand inviolate, immune from challenge except on appeal to the Supreme Court." *(Emphasis Supplied)*

F. It may be mentioned that a Constitution Bench of this Court in a judgment reported as ***Central Board of Dawoodi Bohra Community and Anr.*** v. ***State of Maharashtra and Anr.***[19] quoted from the earlier Constitution Bench

19 (2005) 2 SCC 673

judgment in ***Union of India and Anr.*** v. ***Raghubir Singh (Dead) By Lrs. Etc.***[20] and held as under:

> "10. Reference was also made to the doctrine of stare decisis. His Lordship observed by referring to Sher Singh v. State of Punjab [(1983) 2 SCC 344 : 1983 SCC (Cri) 461] that although the Court sits in divisions of two and three Judges for the sake of convenience but it would be inappropriate if a Division Bench of two Judges starts overruling the decisions of Division Benches of three. To do so would be detrimental not only to the rule of discipline and the doctrine of binding precedents but it will also lead to inconsistency in decisions on points of law; consistency and certainty in the development of law and its contemporary status — both would be immediate casualty.
>
> xxx xxx
>
> 12. Having carefully considered the submissions made by the learned Senior Counsel for the parties and having examined the law laid down by the Constitution Benches in the abovesaid decisions, we would like to sum up the legal position in the following terms:
>
> (1) The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or coequal strength.
>
> (2) A Bench of lesser quorum cannot disagree or dissent from the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. It will be open only for a Bench of coequal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of coequal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted.

20 (1989) 2 SCC 754

(3).....”

G. The conclusion (1) is that a decision delivered by a Bench of largest strength is binding on any subsequent Bench of lesser or coequal strength. It is the strength of the Bench and not number of Judges who have taken a particular view which is said to be relevant. However, conclusion (2) makes it absolutely clear that a Bench of lesser quorum cannot disagree or dissent from the view of law taken by a Bench of larger quorum. Quorum means the bench strength which was hearing the matter.

H. Thus, it has been rightly concluded that the numerical strength of the Judges taking a particular view is not relevant, but the Bench strength is determinative of the binding nature of the Judgment.

.....J.

(HEMANT GUPTA)

NEW DELHI;

SEPTEMBER 19, 2022.