

APPENDIX-1

THE ASSAM HIGH COURT ORDER, 1948¹

Notification No. S.D.4, dated the 1st March, 1948— The following Order made by the Governor-General is published for general information:

Whereas the Assam Legislative Assembly have on the ninth day of September, 1947, adopted a resolution that a High Court be established for the province of Assam, and the said resolution has been submitted to the Governor-General;

Now, therefore in exercise of the powers conferred by sub section (1) of Section 229 of the Government of India Act, 1935, as adopted by the India Provincial Constitution (Amendment) Order, 1948, the Governor General is pleased to make the following Order:

1. (1) This Order may be cited as the Assam High Court Order, 1948.

(2) It shall come in to force on the date of its publication in the Gazette of India.

2. (1) The Interpretation Act, 1889, applies for the interpretation of this Order, as it applies for the interpretation of an Act of Parliament.

(2) In this Order, "the Act" means the Government of India Act, 1935, as for the time being in force in the Dominion of India.

3. (1) As from the fifth day of April, 1948 (hereinafter referred to as "the prescribed day"), there shall be a High Court for the province of Assam which shall be a court of record, and shall consist of a Chief Justice and such other Judges as the Governor-General may, from time to time, whether before or after the prescribed day, appoint in accordance with the provisions of Section 220 of the Act:

Provided that any appointments so made before the prescribed day shall not take effect till the prescribed day.

(2) The said High Court is hereinafter referred to as the High Court of Assam.

4. The High Court of Assam shall have, in respect of the territories for the time being included in the Province of Assam, all such original appellate and other jurisdiction as, under the law in force immediately before the prescribed day, is exercisable in respect of the said territories or any part thereof by the High

Note 1: Published in the Gazette of India, Extraordinary, dated 1.3.1948 at page 399.

By virtue of Section 13 of Act No.27 of 1962 it was known as the High Court of Assam and Nagaland with effect from 1.12.1963.

Again by virtue of Section 28 (b) of Act No. 81 of 1971, it has been known as the Gauhati High Court (High Court of Assam, Nagaland, Meghalaya, Manipur and Tripura) Rules with effect from 21.1.1972.

Court in Calcutta, or by the Governor of Assam exercising the functions of a High Court.

5.(1) The High Court of Assam shall have the like power to approve, admit, enrol, remove and suspend advocates and attorneys, and to make rules with respect to advocates and attorneys, as are, under the law in force immediately before the prescribed day, exercisable by the High Court in Calcutta

(2) The right of audience in the High Court of Assam shall be regulated in accordance with the like principles as immediately before the prescribed day, are in force with respect to the right of audience in the High Court in Calcutta:

Provided that, subject, to any rule made or direction given by the High Court of Assam in the exercise of the powers conferred by this Article, any person who immediately before the prescribed day, is an advocate entitled to practice or an attorney entitled to act in the High Court in Calcutta, shall be recognised as an advocate or an attorney entitled to practice or to act as the case may be, in the High Court of Assam.

6. Subject to the provisions of this order, the law in force immediately before the prescribed day with respect to the practice and procedure in the High Court in Calcutta shall, with the necessary modifications, apply in relation to High Court of Assam, and accordingly that High Court shall have all such powers to make rules and orders with respect to practice and procedure as are immediately before the prescribed day exercisable by the High Court of Calcutta:

Provided that any rules or orders which are in force immediately before the prescribed day with respect to practice and procedure in the High Court in Calcutta shall, until varied or revoked by rules or orders made by the High Court of Assam, apply with the necessary modifications in relation to practice and procedure in the High Court of Assam as if made by that Court.²

7.(1) The High Court of Assam shall have a seal of such form or design as the Chief Justice may direct.

(2) The law in force immediately before the prescribed day with respect to the custody of the seal of the High Court in Calcutta shall with the necessary modifications, apply with respect to the custody of the seal of the High Court of

Note 2: By virtue of Section 6, Assam High Court order, 1948, Clause 4 introduced by Calcutta High Court into Rule 4 of order 22, applies and is deemed to be in force even in the Province of Assam. Therefore, where one of the defendants died during pendency of the suit in the first court and the court, acting under order 22, Rule 4, directed that the representatives of the defendant need not be brought on the record, and also the contesting defendant in his appeal had neither brought the representatives of the deceased defendant on record nor had attacked the validity of the decree; Held that the modification inserted in Rule 4 by Calcutta High Court applied and the order was valid. Secondly, it was too late for him to challenge its legality in the Second Appeal *Husan Ali & Ors. Vs. Ganga Nath*, AIR 1956 Assam 17.

Assam.

8. The law in force immediately before the prescribed day with respect to the form of writs and other processes used, issued or awarded by the High Court in Calcutta shall, with necessary modifications, apply with respect to the form of writs and other processes used, issued or awarded by the High Court of Assam.

9. The law in force immediately before the prescribed day relating to the powers of the Chief Justice, single Judges and Division Courts of the High Court in Calcutta and with respect to all matters ancillary to the exercise of those powers, shall with necessary modifications, apply in relation to the High Court of Assam.

10. The High Court of Assam, and the Judges and Division Courts thereof, shall sit at such places in the Province of Assam as the Chief Justice may, with the approval of the Governor of Assam, appoint.³

11. The law in force immediately before the prescribed day relating to appeals to his Majesty in council or to the Federal Court from the High Court in Calcutta and the Judges and Division Courts thereof shall, with necessary modifications, apply in relation to the High Court of Assam.

12.(1) Except as hereinafter provided, the High Court in Calcutta shall, on and after the prescribed day, have no Jurisdiction in respect of the Province of Assam.

(2) Notwithstanding anything contained in paragraph (1) of this Article or in Art. 4-

(a) any proceedings which, immediately before the prescribed day, are pending in the High Court in Calcutta on its original side, including any proceedings then pending in that High Court as a Court of Reference, shall be heard and determined by that High Court;

(b) the High Court in Calcutta shall have the like jurisdiction to hear and determine any appeal from, or to review, an order of a Judge of that High Court, whether on its original or appellate side, as if this Order had not been made, and

Note 3: Article 10.- Where a writ petition was presented at Sibsagar where the vacation Judge of Assam High Court was holding commission of inquiry and the Hon'ble Judge while admitting the application, granted the stay order, which was ultimately dismissed on the ground that the original presentation of the petition at Sibsagar (the place of seat of High Court being Gauhati), an appeal to Supreme Court in the case *Alok Kumar Roy Vs. Dr. S.N.Sarma*, [AIR 1968 SC 453] their Lordships held that where a Judge heads temporary Commissions of Inquiry under the Act, he remains a part of the High Court and is entitled to sit and act as a Judge of the High Court whenever he thinks fit. Their Lordships further held that even assuming that the presentation of writ petition at Sibsagar was irregular, which ought to have been presented at Gauhati, the fact remains that the petition was sent to Gauhati later and was dealt with there and as such on this ground only the said writ petition could not be dismissed.

the High Court of Assam shall have no jurisdiction to hear or determine any such appeal, or to review any such order; and

(c) the High Court in Calcutta shall have the like jurisdiction to hear and dispose of any application for leave to appeal to his Majesty in Council or the Federal Court from an order of that High Court as it would have had if this order had not been made, and the High Court of Assam shall have no jurisdiction to hear or dispose of any such application.

(3) All proceedings pending in the High Court in Calcutta immediately before the prescribed day, other than proceedings with respect to which that High Court retains jurisdiction by virtue of paragraph (2) of this Article, shall, where the Court of origin is situated in the Province of Assam, stand transferred by virtue of this Order to the High Court of Assam.

(4) Any order made by the High Court in Calcutta-

(a) in any proceedings with respect to which that High Court retains jurisdiction by virtue of paragraph (2) of this Article; or

(b) before the appointed day, in any proceedings transferred to the High Court of Assam by virtue of paragraph (3) of this Article; shall for all purposes have effect, not only as an order of the High Court in Calcutta, but also as an order made by the High Court of Assam.

(5) For the purposes of this article, proceedings shall be deemed to be pending in a court until that court has disposed of all issues between the parties, including any issues with respect to the taxation of the costs of the proceedings.

(6) References in this Article to a High Court shall be construed as including references to a Judge or Division Court thereof, and references to an order made by a Court or a Judge shall be construed as including references to a sentence, judgment or decree passed or made by that Court or Judge.

13. As from the prescribed day, the Governor of Assam shall cease to have the jurisdiction of a High Court in respect of any part of the Province of Assam and all proceedings which immediately before that day are pending before the Governor exercising the functions of a High Court shall stand transferred by virtue of this Order to the High Court of Assam and shall be disposed of by that High Court according to law.

14. Nothing in this Order shall prejudice the application to the High Court of Assam of any relevant provisions of the Act, and this Order shall have effect subject to any provision that may be made on or after the prescribed day with respect to that High Court by any Legislature or other authority having power to make such provision.