

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 27th February, 2015

+ W.P.(C) No.442/2014, CMs No.1394/2014 (for direction)& 1176/2015

ADVOCATE MANISH KUMAR KHANNA

.... Petitioner

Through: Petitioner in person.

Versus

THE HON'BLE DELHI HIGH COURT & ORS. Respondents

Through: Mr. Sanjay Jain, ASG with Mr. Akshay Makhija, CGSC and Mr. Rahul Jain, Mr. Jayant K. Mehta with Ms. Madhavi Khare, Advs. for DHC.
Mr. Ashish Dixit, Adv. with Vice President and Secretary of DPWA, Interveners.

CORAM:-

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. This petition under Article 226 of the Constitution of India, filed as a Public Interest Litigation (PIL), seeks the reliefs of, (i) a direction to this Court to “follow the mandatory direction of the Hon’ble Supreme Court in the case of *Anil Rai* regarding passing of the judgments / orders within two months of the hearing” etc.; (ii) a direction to this Court to “follow the model case law system as stated in the *Salem Advocate Bar Association* case”; (iii) a direction to this Court to “speed up the hearings of the PIL, people in jail and bail matters”;

(iv) a direction to this Court as well as the Trial Courts to “follow the good old practice of the Hon’ble Supreme Court in recording the actual time (not just duration) for which a matter has been heard on a particular occasion in every daily order and put every order on internet”; and, (v) a direction to “the State and the Government to provide for adequate structure in the form of Prosecutors, Standing Counsels, sufficient manpower in the Legal Department”.

2. The petition was listed for admission on 22nd January, 2014, 29th January, 2014, 17th February, 2014 when no order, neither admitting the petition nor issuing notice thereof was issued. On 18th February, 2014, the counsel for the respondents no.2&3 i.e. Government of National Capital Territory of Delhi (GNCTD) appearing on advance notice was asked to take instructions with respect to Prayer (v) i.e. of a direction to the Government to provide adequate infrastructure in the form of Prosecutors, Standing Counsels, sufficient manpower in the Legal Department etc.

3. In response to the above, GNCTD has filed an affidavit *inter alia* stating:-

(i) that according to the duties assigned to the Prosecutors in Directorate of Prosecution, the Assistant Public Prosecutors defend the

State before the Metropolitan Magistrate Courts and the Additional Public Prosecutors defend the State before the Sessions Court; that the Chief Prosecutors are in charge of the Districts and supervise the Assistant Public Prosecutors and Additional Public Prosecutors and overall legal issues of their respective District; that the Director (Prosecution) being Head of the Department is overall in charge of the Prosecution Wing; and,

(ii) that this Court has been monitoring the shortage of Public Prosecutors vide W.P.(Crl.) No.1549/2009 titled ***Court on its own motion Vs. State, NCT of Delhi*** and has issued a number of directions to fill up all the vacant posts of Prosecutors; in compliance therewith all possible steps have been taken to meet the shortage of Public Prosecutors so that the justice delivery system does not suffer; various steps taken / being taken including for increasing the strength of the Public Prosecutors, filling up the vacancies, training of the Public Prosecutors, provision of library for the Public Prosecutors, providing modes for safe keeping of files, making available seating space within the Court rooms / office block with online search engines, internet facility, stationery, facility of printing, photocopying for the Public

Prosecutors and facilitating transport etc. of the Public Prosecutors have been elaborated.

4. Though as aforesaid, neither the petition was admitted nor notice thereof was issued and the GNCTD was only asked to take instructions with respect to prayer (v) only but when the matter came up on 21st July, 2014, the counsel for the respondent no.1 i.e. this Court was asked to obtain instructions qua the prayer of the petitioner for recording of time of hearing in each order sheet. After perusing the affidavit aforesaid of the GNCTD, they were directed to re-examine the issue of pay scales of the Public Prosecutors.

5. In response to the above, the counsel for this Court on 15th October, 2014 stated that there cannot be any in-principle objection to recording in the order sheet of the time taken by each counsel in every case listed before the Court. It was however further stated that where the cases are not heard at all or are, after hearing, adjourned, it would not be worthwhile to record the time. Vide the order of the said date, it was observed that this Court's Establishment should consider indicating suitable protocols and guidelines for recording and reflecting the time taken by the counsel in each case, subject to some minimum time - say five or ten minutes and it was opined that the same would help /

assist the Court in given cases to determine the oral hearing to be granted. Qua the issue of emoluments of Public Prosecutors, notice was issued to the Additional Solicitor General, Delhi High Court.

6. On 27th November, 2014, attention of this Court was invited to Rule 9 of the Delhi High Court (Original Side) Rules, 1967 which provides for recording of time taken by each counsel in every case listed before the Court and it was stated that appropriate mechanism to universally apply the said rule in spirit in all cases and not merely on the Original Side was under contemplation. Qua the emoluments of Public Prosecutors, the learned ASG was asked to examine the matter and to indicate the measures to be taken to ensure that the pay scales are improved in order to secure more effective representation in the criminal matters including in this Court.

7. At this junction, the petitioner filed CM No.1394/2014 to place on record the replies received by him from this Court in response to queries made under the Right to Information Act, 2005 qua pendency of cases.

8. Another application being CM No.1176/2015 has been filed by the Delhi Prosecutors Welfare Association for intervention in the petition, along with a draft petition seeking revision / upgradation of pay scales with effect from the

year 2009 and seeking a direction for payment of arrears which would so become due. GNCTD also has filed a further Status Report delineating the steps taken / being taken for providing better facilities to the Public Prosecutors to enable them to pursue the cases efficiently and effectively.

9. We heard the petitioner appearing in person, the counsel for the intervener, Delhi Prosecutors Welfare Association, learned ASG and Mr. Sanjay Lau, Addl. Public Prosecutor on 28th January, 2015 and reserved orders.

10. Though, as the aforesaid narrative discloses, the petition was never entertained and from time to time the counsel for the GNCTD and the counsel for this Court were merely directed to obtain instructions on only two aspects i.e. qua prayers (iv) & (v) and the petition qua the other reliefs is thus deemed to have been dismissed but since there is no formal order dismissing the petition qua the remaining reliefs and giving reasons therefor, we deem it appropriate to deal with all the reliefs.

11. Qua the first relief claimed by the petitioner, the petitioner in the petition has set out certain passages of the judgment of the Supreme Court in **Anil Rai Vs. State of Bihar** (2001) 7 SCC 318 laying down that judgments should be pronounced within two months of completion of final arguments and the

procedure to be adopted by the concerned litigant in the event of delay. It is the case of the petitioner that the said directions of the Supreme Court are not being followed.

12. The petitioner however at the time of hearing did not make any arguments on this aspect.

13. The law declared by the Supreme Court is binding on all Courts within the territory of India (refer Article 141 of the Constitution of India). It is not for this Court to restate the said law. No direction as sought by the petitioner for the said law to be followed is required to be issued. It cannot be lost sight of that pronouncement of judgments is a judicial function and no Bench of the High Court in exercise of powers under Article 226 of the Constitution of India can issue a direction to the other Benches of the High Court, particularly with regard to the judicial functions. If according to the petitioner or according to any other litigant the direction or the law laid down by the Supreme Court in *Anil Rai* (supra) is not being followed by any particular Bench, it is for the petitioner or for such litigant to take appropriate step in this regard.

14. The position with respect to the second relief claimed by the petitioner is also the same. The proceedings before the Court are governed by the rules and

procedure applicable thereto. The Supreme Court in *Salem Advocate Bar Association, Tamil Nadu Vs. Union of India* (2003) 1 SCC 49 though rejected the challenge to the amendments made to the Code of Civil Procedure, 1908 in the year 2002 but felt the need for formulating modalities for the manner in which Section 89 and other provisions which had been introduced by way of amendment have to be operated and constituted a Committee to ensure that the amendments become effective and result in quicker dispensation of justice. The said Committee was also given the liberty to consider devising a model case management formula as well as Rules which should be followed while taking recourse to Alternate Dispute Resolution referred to in Section 89. It was also observed that the model rules, with or without modification so formulated may be adopted by the High Court concerned for giving effect to Section 89(2)(d). The said Committee submitted a report and which report was dealt with in *Salem Advocate Bar Association, Tamil Nadu Vs. Union of India* (2005) 6 SCC 344. The Supreme Court, in the said judgment after noticing the report of the Committee including qua the Model Case Flow Management Rules and Draft Rules observed that the High Courts can examine the said rules, discuss the matter and consider the question of adopting or making the Model Case Flow Management Rules with or without modification as part of the Rules of

the High Court framed in exercise of powers conferred by the CPC and Article 225 of the Constitution of India. Though undoubtedly this High Court in its Rules has not adopted any such Case Flow Management Rules by the said nomenclature but otherwise, we may notice that the Rules of this Court indeed provide for the case flow and we further find that most of the Model Rules to be found in the judgment of the Supreme Court, at least as far as this Court is concerned, are already in place. Nothing was highlighted and shown to us during arguments on the said aspect. Be that as it may, having taken note of the said fact, we direct the Registrar General of this Court to place a copy of the judgment in ***Salem Advocate Bar Association*** (supra) along with a copy of this judgment before the Rules Committee of this Court for considering, whether there is any need to adopt any of the other Model Rules, if not already in place.

15. The third relief claimed for speeding up of the hearing of the PIL, of people in jail and bail matters also relates to the exercise of judicial function by the Judges of this Court and qua which no general direction under Article 226 can be rendered. We may however observe that this Court has been doing its best with the available resources to deal as expeditiously as possible with the

cases and particularly those which are found deserving of a more expeditious hearing / disposal.

16. We may notice that the petitioner during the hearing also, rather than concentrating on the suggestions if any for so expediting the disposal of cases, argued that while certain cases are given priority, others languish.

17. On this aspect also, no judicial adjudication is possible. It is up to the individual Benches of this Court to take up matters which require an expeditious hearing / disposal. No direction under Article 226 of the Constitution of India can be issued by us directing the Judges of this Court to take up any particular category of matters before the others. We are otherwise aware that whenever a need therefor is shown, such a matter is given priority.

18. The Supreme Court in *Jharia Vs. State of Rajasthan* (1983) 4 SCC 7 when approached with a writ petition under Article 32 of the Constitution of India for declaration that the conviction under Section 302 of the Indian Penal Code by the High Court and SLP whereagainst had been dismissed was illegal and for restraining the State from giving effect to the sentence, held that the finality of the judgment of the Supreme Court by dismissal of an SLP cannot be upset in a proceeding under Article 32 and observed “obviously, the

Supreme Court cannot issue a writ, direction or order to itself in respect of any judicial proceedings and the learned Judges constituting the Bench are not amenable to writ jurisdiction of the Supreme Court”. The Supreme Court recently in *Subrata Roy Sahara Vs. Union of India* (2014) 8 SCC 470 reiterated the said view.

19. Though the Full Bench of the High Court of Patna in *In Re: Babul Chandra Mitra* AIR 1952 Patna 309 in the context of a writ petition calling upon the High Court to enroll the petitioner as an Advocate held that a writ cannot be issued by the High Court to itself for the process involves rather the absurd position that it calls upon the Judges to show cause to themselves why they should not be directed to quash something they themselves had determined and that a Judge is without jurisdiction to issue a writ or order to another Judge of coordinate jurisdiction and power to compel performance of duties, but we tend to agree with the Full Bench of the Kerala High Court in *K. Prabhakaran Nair Vs. State of Kerala* AIR 1970 Kerala 27 that the High Court acting in its judicial capacity cannot be said to be an authority subject to the jurisdiction of the High Court itself under Article 226 for the issue of a writ of certiorari; it was clarified that an order passed by a Chief Justice on the administrative side can in an appropriate case be the subject matter of a

proceeding under Article 226 in the same High Court. The view of the High Court of Madras (in *Devsahayam Vs. State of Madras* AIR 1958 Madras 63 and *In Re: Hayles* AIR 1955 Madras 1 (FB), Allahabad (in *Abul Vs. Chief Justice* AIR 1971 Allahabad 44), Calcutta (in *Pramatha Vs. Chief Justice* AIR 1961 Calcutta 545 and *Jyoti Prakash Mitter Vs. Hon'ble Mr. Justice H.K. Bose* AIR 1963 Calcutta 483 and Madhya Pradesh (in *Daulat Singh Vs. Union of India* MANU/MP/0342/1993) is also that administrative action of the High Court can be subjected to judicial review of the same Court under Article 226. We may add that the same is the view of this Court.

20. That brings us to the reliefs (iv) & (v) to which the hearing was confined.

21. As far as the aspect to recording of the actual time for which a matter has been heard in the order sheet is concerned, Clause 9 of the Original Side Practice Direction No.3 of 1974 (not Rule as recorded in the order dated 27th November, 2014) already exists in this regard. The grievance of the petitioner is that the same is not being abided. Again, once the direction is found to exist, there is no need for us to issue a new direction in this regard. Again it is for the petitioner or the concerned litigants to seek compliance therewith. We may

however notice that the Judges of this Court as of the other Courts are already hard pressed for time and the issue of curtailing / limiting the time of hearing in the open Court is already being publically debated. We had during the hearing asked the petitioner whether not such recording of the time would lead to arguments being addressed on the aspect of correctness of the time for which the matter was heard, with counsels contending that they could not avail of the optimum / available time owing to Court queries or interjections by the other counsels or on some other account. The petitioner could not controvert such a possibility. It thus appears that recording of such time may not always and in all situations be productive and may rather have undesirable consequences. The same may also become a ground, with counsels contending that they were given too short and their opposing counsels or others were given too long a hearing by the Court. In fact, this was precisely sought to be argued. We cannot also lose sight of the fact that the proceedings in a Court which are mostly concerning human behaviour and attitudes cannot be confined to a straightjacket formula and the same if done may become an impediment to the justice delivery system. Some matters are simple and others complex involving intricate issues. Certain amount of play in the joints / leeway / discretion has to be given to the Judges to control and regulate the proceedings before them as

per the need of the case and hour. No general rule of how much time is to be given or is optimum can be laid down. It has to be necessarily left to discretion of the presiding Judge. We are therefore of the opinion that relief (iv) cannot be granted.

22. A Division Bench of this Court in *Deepak Khosla Vs. Union of India* AIR 2011 Delhi 199 was concerned with a petition under Article 226 seeking a direction to this Court not to interfere with the non-intrusive audio recording by the petitioner or his Advocate of the judicial proceedings involving the petitioner. It was noticed in the judgment that there is no specific legislation, provision or law regulating the field referring to which it can be said that there is a mandate that audio / video recording is to be done. It was held that for a mandate to be issued to allow such recording or not to interfere with such recording, first a public duty or operation of law has to be shown and since there was no such duty or law, no such mandamus could be issued. It was further held that the petitioner's personal belief that audio / video recording will lead to transparency and will curtail the Court's time could not earn the status of law. It was further reasoned that framing of a rule is a matter of policy and there can be no mandamus for audio / video recording of the Court proceedings.

23. In our view, the said judgment of the Division Bench of this Court and with which we respectfully concur squarely applies to the reliefs claimed in the present petition also. We may also observe that each Judge of this Court acts as High Court and any direction by one Bench to others with respect to exercise of judicial functions by others would be capable of being nullified by a counter writ issued by others or any of the others. The totality of the jurisdiction conferred on a High Court by the Constitution and the law is exercised by individual Judges sitting singly or in Benches. In this context each Judge is the High Court. The decisions of the High Court are binding on all Courts subordinate to it and no writ with respect to performance of judicial functions, in the realm of legislation should be issued. Issuance of a writ with respect to judicial functions from one Judge to another Judge of the same High Court will destroy the traditional high degree of comity among Judges of superior Courts which is essential for the smooth and harmonious working of superior Courts. The respect and amity which the Judges should extend to each other will certainly be diminished if they were to issue writs to one another. Issuing mandamus and direction in exercise of writ jurisdiction would be judicial overreach and impropriety. These are matters requiring detailed and

widespread exchange of views and debate and personal perspectives would differ.

24. As far as prayer (v) is concerned, the Addl. Public Prosecutor attached to this Court on enquiry expressed satisfaction as to the infrastructure and facilities available and stated that any difficulty continues shall be taken up with Hon'ble Chief Justice or with the appropriate Administrative Committee. As far as the aspects concerning Public Prosecutors in the Trial Courts are concerned, this Court in W.P.(Crl.) No.1549/2009 *supra* is already concerned with the same and need for entertaining the present petition also on the same aspect is not felt.

25. The counsel for the intervener at this stage sought to raise his own pleas. We are however not inclined to entertain the same. Needless to state that the intervener if feels the need can always intervene in W.P.(Crl.) No.1549/2009 *supra* or can file its own independent petition.

26. Accordingly save for the aforesaid direction in para 14 hereinabove, we do not find any merit in this petition and dismiss the same. The intervention application is also dismissed with liberty however to the intervener to raise the grievance as raised in the intervention application in an appropriate proceeding

i.e. either by seeking impleadment / intervention in W.P.(Crl.) No.1549/2009
or by way of independent proceedings.

No costs.

RAJIV SAHAI ENDLAW, J.

SANJIV KHANNA, J.

FEBRUARY 27th, 2015
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