

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

W.P.Nos.22863, 23029 of 2002, 4940 & 5327 of 2003

Between:

Pediredla Sarabhannapatrudu
and others

....Petitioners

and

The District Collector,
Vizianagaram District, and others.

....Respondents

JUDGMENT PRONOUNCED ON

: 17.07.2017

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO :

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? : Yes
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? : Yes
3. Whether Their Ladyship/Lordship wish to
see the fair copy of the Judgment? : Yes

*** THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO**

+ W.P.Nos.22863, 23029 of 2002, 4940 & 5327 of 2003

% 17.07.2017

Pediredla Sarabhannapatrudu
and others.

...Petitioners

vs.

\$ The District Collector,
Vizianagaram District, and others.

... Respondents

!Counsel for the Petitioners : Sri P.R.Prasad

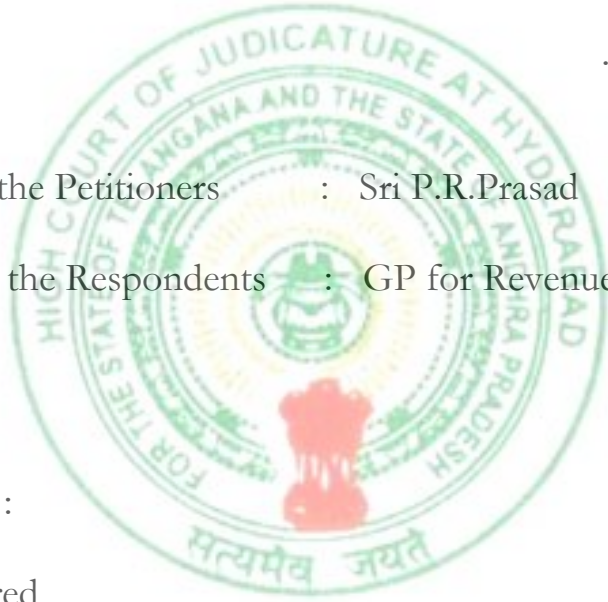
^Counsel for the Respondents : GP for Revenue

<Gist :

>Head Note :

? Cases referred

1. AIR 2003 SC 1805
2. (2016) 6 SCC 1



HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

W.P.Nos.22863, 23029 of 2002, 4940 & 5327 of 2003

COMMON ORDER:

All these writ petitions are being disposed of by this common order as they relate to the same extent of Ac.132.00 of land in respect of which the petitioners in W.P.Nos.22863 & 23029 of 2002 are claiming rytowari pattas whereas the same is disputed by the Government in W.P.Nos.4940 & 5327 of 2003. If the Government Writ Petitions are allowed, the Claimants Writ Petitions have to be dismissed and vice versa. Heard learned counsel for the Petitioners.

For convenience, the parties shall be referred to as the claimants and the Government. The respondent Nos.1 and 2 are the appellate Tribunal and the Settlement officer.

This is the story of a hill existing in Vizianagaram District and sought to be claimed by the claimants on the ground that it was wrongly classified and is a ryoti land and owned by them. The case was perfunctorily contested on behalf of Government without producing relevant records and was about to pass to the hands of claimants. At that stage it has come before this court. The facts are:

The disputed lands are situated in Kantakapalli Village known as Sarabhapuram Mettu Thota of Kothavalasa Mandal of Vizianagaram District. The said lands in R.S.No.245 (Part) originally belonged to the Inamdar of Nidigattu Agraharam, part of erstwhile Vizianagaram estate and was taken over by the Government under the provisions of the Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948 (for short, the Act) on 7.9.1959. The schedule lands are situated in R.S.No.245 of Kantakapalli Village and is correlated to S.Nos.107 admeasuring an extent of Ac.210-00 and in S.No.108 admeasuring Ac.169.02 cents, classified as Assessed Waste Dry (AWD) lands and vested with the Government. The land in R.S.No.245 was classified as 'Hill Poramboke'. The entries recorded in Village "A" register of the year 1941 show that the Survey No.108 with an extent of Ac.169.02 was classified as 'poramboke konda' and that land was free from encroachments prior to the notified date and the cultivation accounts of the pre-abolition period confirmed the same.

The case of the Government is that the claimants encroached upon the claim land some time after the crucial date of 1.7.1945 about two and half decades ago. However, based on irrelevant pieces of evidence of Inamdar of

Nidigattu Agraharam, who has no manner of title or right over any part of land covered by S.No.107 equivalent to R.S.No.245 laid a claim for the said land. All the registered sale documents do not relate to the land in R.S.No.245 of Kantakapalli Village. All the exhibits relied on by the respondents in support of their claim relate to post-abolition period and the documents of pre-abolition period did not show any cultivation.

However, based on the claim made by the claimants, the Settlement Officer, Visakhapatnam, by his order dated 18.12.1987, held that the claimants are entitled to ryotwari patta in terms of Clause (iii) of sub-section 13 of the Act read with Section 15 (1) of the Act and accordingly upheld their claim for an extent of Ac.132-00 in R.S.No.245 part of Kantakapalli Village. Against the said order, the Mandal Revenue Officer, Kothavalasa Mandal, Vizianagarm District, preferred T.A.Nos.1/88 and 2/88, which were dismissed vide order dated 25.6.1996. Challenging the said orders, the Mandal Revenue Officer, Kothavalasa Mandal, filed the above W.P.Nos.4940 of 2003 & 5327 of 2003, whereas the claimants filed WP Nos.22863 and 23029 of 2002, seeking a direction to the respondents to grant ryotwari pattas as per the orders of the Settlement Officer.

In view of the above un-disputed facts, it has to be seen whether the orders passed by respondents 1 and 2 in respect the above land was valid or not and whether the claimants are entitled for a patta.

The case of the claimants before the 2nd respondent was that their predecessors-in-title raised Mango tope about 60 years back and the usufruct of tope has been under their enjoyment for the last several decades. In the registered sale deed of the year 1920 executed between the undivided Inamdars, it was recited that the land admeasuring Ac.400-00 was purchased by them from Pediredia Appanna Gari Mallu Patrudu etc. in the year 1863, that by the year 1920 it was under cowle executed by one Behra Kannappatrudu, the land contained fruit bearing trees and hence it was a ryoti land. It is their further case that though it was established that it was a ryoti land, during the survey and settlement operations, the claim land was erroneously recorded as 'hill poramboke' even though there is a long standing mango tope aged more than 60 years in the entire claim land. The claimants purchased the entire claim land through several registered sale deeds from the year 1937 onwards from the inamdars. The boundaries shown in the registered sale deeds from 1920 onwards clearly established that the claim land covered by the above said

registered sale deeds is one and the same. The existence of old mango tope clearly proves the cultivation during the relevant period and thus, the claimants are entitled for a ryotwari patta. Accordingly, they claimed for grant of ryotwari pattas.

The Mandal Revenue Officer, Kothavalasa, filed a counter-affidavit before the 2nd respondent stating that the land is not a ryoti land and denied that it was under cultivation by the year 1920. It was stated that the land is 'hill poramboke' and classified as such in the village records. Even if the claim of the claimants is true, they cannot get any better title after abolition of estates. It is further stated that the claim of the claimants that it was erroneously recorded as "hill poramboke" after the estate was taken over was not correct. The sale deeds relied upon by the petitioners do not relate to the schedule mentioned lands and hence, they are not entitled to any ryotwari patta. The nature of the land shows that it was not fit for cultivation. The land being a 'hill poramboke' exclusively vests in the Government.

The claimants filed Exs.P1 to P16 and examined PWs.1 to 5 on their behalf, whereas the Mandal Revenue Officer, Kothavalasa, filed Exs.C1 and C2 and got himself examined as

RW1 and examined RW2-Mandal Surveyor, Kothavalasa Mandal, on his behalf.

The 2nd respondent-Settlement Officer, Visakhapatnam, framed the following points for consideration:

“1. Whether the schedule land is the one covered by or acquired through registered sale deeds from Exs.P1 to P8 and if so whether the petitioners proved by cogent evidence, the cultivation test during the statutory period from the crucial date of 1.7.1945 to the notified date of 7.1.1959.

2. Whether the petitioners are entitled to ryotwari patta in view of the contention raised by respondent about the nature of the land as ‘Hill Poramboke’?”

On the basis of the evidence, the 2nd respondent came to the conclusion that the claimants or their predecessors-in-title were in personal occupation as on the crucial date of 1.7.1945 and the land was under cultivation by way of mango tope during the years 1945-1959. The land revenue receipts show that they have paid encroachment fees levied by the Government during the Faslies 1376 to 1385 (1966 to 1975). However, 2nd respondent did not decide the second point with regard to the entitlement of the claimants for ryotwari patta in view of the nature of the land recorded as ‘hill poramboke’ clearly. He also did not comment with regard to Ex.C2 filed by the Mandal Revenue Officer.

When an appeal was preferred before the 1st respondent- the Estate Abolition Tribunal-cum-District Judge, Vizianagaram, he observed that there was no evidence on record as to exactly when the estate was notified including these lands since it has come to the knowledge of the Court that since such lands in the District have been abolished, that date has to be taken as the cut off year (sic.date). He further observed that in order to get a patta to the land, one should be in direct and continuous possession of the same from 1st July, 1945 onwards. He further held that the lands are inam lands and they are not the ryoti lands falling within the mischief of Section 3 Clause (16) of Andhra Pradesh (Andhra Area) Estates Land Act, 1908. However, the 1st respondent strangely upheld the order of the 2nd respondent-Settlement Officer with the following observations:

“No doubt the land was described in some of the documents as Banzar Sagu obviously this term ‘Banzaar’ used as it was used in the IFR register which was prepared long back but subsequent evidence of existence of the trees were not noted in it which were mentioned in the documents. No doubt the Government and the Zamindar were not the parties to these documents. Considering the fact that the documents are registered documents under which PWs.1 and 2 have stated that the properties were purchased from different sharers, they cannot be said as brought into existence for the purpose of making the claim. The second important documents are Exs.P1 to P7 which are the documents prior to 1945 which is the cut off date fixed though the other documents are subsequent to that date. The earlier document Ex.P1 mentions the extent of the land as 360 acres. The 1/12th share was shown as sold and there is a clear recitals along with the trees therein the land is sold. Mango

trees were also mentioned in this document. Ex.P2 mentions the land as cultivated banjar land that is a document of the year 1944 which is prior to the cut off date. Ex.P3 also mentioned the land as cultivated banjar land it is also a document of the year 1943 prior to cut off date. Even the land covered by Ex.P4 also which is an agreement which is not registered document which cannot be given much weight as the persons connected with that document are not examined to prove that document. Ex.P5 which is also of the year 1943 mentions that though the land is a banjar land there are different types of trees in that land. Ex.P6 document also shows that the land is cultivated though reference is not made with regard to the trees. Ex.P7 mentions about the existence of trees that is the document of the year 1940 which is prior to the cut off date mentioned under Section 13 of the Estates Abolition Act. In Ex.P.10 which is a plan the land was shown as waste land obviously when the IFR is prepared the land is described as waste land. All these aspects were considered by the lower court in deciding the cultivation test which was described at length at page No.20th of the judgment. It shows that though there was some dispute at the earlier state with regard to the identity of the land. That aspect was also clearly explained at 19th page of that judgment by discussing various aspects of the evidence by the learned Settlement Officer. Even the RWs.1 and 2 who visited the land and noted the physical features and existence of the trees who did not seriously dispute about the existence of the trees by considerable time. Obviously on the basis of the IFR entries ignoring the subsequent enjoyment of the property after duly considering the document now marked before this Court that some part of the land which was subsequently registered and treated as hill banjar land which is now continuously to be waste land and in the remaining land mango grove was raised and enjoyed by different enjoyers in different moieties.”

No one could discern any relevant reasoning from the above observations.

In order to claim patta in respect of the estate land, the provisions of the Act provide as follows:

The Act applies to all estates as defined in Section 3 clause (2) of the Andhra Pradesh (Andhra Area) Estates Land Act, 1908. Section 2(7) defines “inam estate” as an estate within the meaning of Section 3 clause 2(d) of the Andhra Pradesh (Andhra Area) Estates Land Act, 1908. After the notification of the estate, all the rights and interests created in or over the estate by the principal or any other landholders as against the Government ceases. But, in respect of the persons whoever entitled for a ryotwari patta and a decision is pending before the Settlement Officer, the said person shall not be dispossessed. The relationship of a landholder and ryot also would be extinguished. The ryots in the estate and persons holding under them shall, as against the Government, are entitled only to such rights and privileges as are recognized or conferred on them by or under the Act, and any other rights and privileges which may have accrued to them in the estate before the notified date against the principal or any other landholder thereof shall cease. The power is given to the Settlement Officer under Section 9 of the Act to enquire and determine whether any inam village or hamlet or khandriga granted as inam in his jurisdiction is an inam estate or not. The grant of ryotwari patta is regulated by Section 11 of the Act. But, such patta shall not be granted to a person who was admitted into possession of any land by a landholder on or

after the first day of July, 1945. The estate may be surveyed, though it was surveyed earlier. But, such resurvey is limited to the extent necessary for the introduction of the ryotwari settlement in the estate or part thereof. The ryotwari settlement shall be effected in accordance with the settlement notification framed and published by the Government for the purpose under Section 22 of the Act.

The Government made the rules called, the Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Grant of Ryotwari Patta Rules, 1973, under G.O.Ms.No.50, Revenue (J-1) Department, dated 16.01.1974. The application for grant of ryotwari patta shall be filed before the Settlement Officer within thirty days from the date of commencement of the said rules. However, there is a provision for condonation of delay.

The record discloses that the claim land in R.S.No.245 Part of Kantakapalli is an inam estate taken over by the Government on 07.01.1959. Originally, it formed part of an uninhabited village called as Sarabhapuram. It was originally recorded as waste land in the survey conducted by the Assistant Director of Inam Surveyor, Madras in 1905. During the period 1959-1987, for nearly 28 years, no one claimed patta to the said land. The 36 claimants filed S.R.No.1 of 1987

claiming patta for an extent of Ac.67.25 cents and another 29 claimants claiming patta for an extent of Ac.64.50 cents in S.R.No.2/87. The entire land is situated in R.S.No.245. It appears that the delay in filing the petitions was condoned in I.A.Nos.44 and 45 of 1987 on 14.09.1987. Such an order is neither available in the record nor challenged by the Government.

A perusal of the orders passed by the Settlement Officer and the Tribunal clearly shows that they have not considered the relevant aspects of the case and the existing facts. The 2nd respondent-Settlement Officer merely extracted the depositions and synopsis of the documents without taking into consideration their relevancy. The Settlement Officer did not determine whether the land was an inam land or not. He did not look into the aspect whether survey was conducted after taking over the estate and the result of such survey. He did not find out the entries in the revenue record as on the date of taking over of the estate or subsequent thereto in order to decide the entitlement of the claimants. The entries and evidence produced by the claimants related to 1966 to 1979 which was not relevant.

The Settlement Officer, though in paragraph 10 of the order stated that the petitioners filed Exs.P1 to P6, he has

taken into consideration Exs.P1 to P16. He categorized the documents for the purpose of ascertaining the identity of claim land and also for ascertaining whether they were cultivating the said land. He took into consideration the oral evidence of P.W.1, who stated that the claim land was purchased through sale deeds Exs.P1 to P9, P11 to P13, and a mango tope was raised in or about 1930 when the previous ryots Behra people abandoned the land. He failed to notice that the claim of the first petitioner with regard to the purchase is contrary to the stand of taking possession by them after abandonment of the land by the Behra people. The petitioners should have relied either on the purchase or occupation. In any case, the said fact is irrelevant after abolition of estates. He came to the conclusion that the boundaries of the land involved in the present case, which is an extent of Acs.130.00, is situated within the boundaries of the deeds under Exs.P1 to P9, without giving a finding on those boundaries. He attributed the existence of boundaries as an admission by R.W.2, who merely stated that the boundaries mentioned in the petition schedule tallied on ground, but nowhere stated that they are situated in the boundaries mentioned in Exs.P1 to P9. It is one thing to admit the existence of boundaries mentioned in the claim petitions and correlating them with the alleged sale deeds.

He further relied on Ex.P10 plan of 1905 signed by the then Assistant Director, Inam Survey, in order to come to the conclusion that the schedule land fell within the said boundaries. Accordingly, he concluded that the claim land is no other than the land covered by registered sale deeds Exs.P1 to P8. Nowhere he stated with regard to the boundaries covered by the sale deeds and the boundaries mentioned in Ex.P10. In any event, he has not taken into consideration the survey conducted after the abolition of the estate and the record relating thereto.

While examining the claim of cultivation, he relied on the selfsame documents wherein a recital was made that the land was under “sagu”. He further relied on Exs.P14 to P16 showing the sale of usufruct of mango tope during the years 1945 to 1959, and P.Ws.3 and 5 are the persons who purchased the usufruct. There is no evidence to show whether the usufruct was from the tope on the schedule land or from some other land. He concluded that the land was under cultivation from 1937 onwards and the tope is still in existence. In respect of cultivation also he attributed the finding through admission alleged to have been made by the respondents in the counter stating that the age of the tope was 10 to 30 years and the land was covered by mango tope. He overlooked the fact that

when he was examining the claim in 1990 it would definitely be more than 30 years. But, he overlooked the crucial fact of the date of notification of the land and the land covered by the sale deeds. The appellate authority in his order noted that there was no evidence on record as to exactly when the estate was notified including the schedule land and the date of abolition is the relevant date. Though the appellate authority noted that in order to get a patta, the land should have been in direct and continuous possession of the claimants from 01.07.1945 onwards, even in the absence clinching evidence to support the claim of the claimants, he upheld the order of the 2nd respondent. So, this Court is not satisfied with regard to the appreciation of evidence, both documentary and oral, by the Settlement Officer as well as by the appellate authority. The improper appreciation of documentary evidence by respondents 1 and 2 made their orders perverse.

As stated above, no findings were recorded with regard to the second point raised by the 2nd respondent. The order passed by the 1st respondent is totally vague and appears to have been passed without application of mind.

Be that as it may, the conduct of the officers is totally blameworthy. No record was produced before respondents 1 and 2 to defend the case. Their half-hearted attempt is

evident in not challenging the order passed by the 2nd respondent condoning the abnormal delay of 28 years. In the writ petitions also, only an attempt was made to attack the order by stating that no opportunity was given to the witnesses to cross-examine them. The learned Government Pleader also raised only that point taking a cue from the arguments of the counsel for the Government before the Tribunal, 1st respondent as is evident from para 12 of the order. This is a totally unsatisfactory state of affairs.

Added to that, the role of the Government Pleader who filed the Writ Petitions also require to be commented upon. The Government Pleader, ignoring the elementary principle of law and practice relating to the filing of Writ Petitions, filed the present Writ Petitions in the name of the Mandal Revenue Officer who is not competent to file the Writ Petition. The Supreme Court in *Chief Conservator of Forests, Govt. of A.P. v. Collector*¹ by considering Article 300 of the Constitution of India read with Section 79 and Order 27 Rule 1 of CPC, observed as follows:

“The question that needs to be addressed is, whether the Chief Conservator of Forest as the petitioner/appellant in the writ petition/appeal is a mere misdescription for the State of Andhra Pradesh or whether it is a case of non-joinder of the State of Andhra Pradesh - a necessary party. In a lis dealing with the property of a State, there can be no dispute that the State is the necessary party and should be impleaded as provided in Article 300 of the Constitution

¹ AIR 2003 SC 1805

and Section 79 of C.P.C., viz., in the name of the State/Union of India, as the case may be, lest the suit will be bad for non-joinder of the necessary party. Every post in the hierarchy of the posts in the Government set-up, from the lowest to the highest, is not recognised as a juristic person nor can the State be treated as represented when a suit/proceeding is in the name of such offices/posts or the officers holding such posts, therefore, in the absence of the State in the array of parties, the cause will be defeated for non-joinder of a necessary party to the lis, in any court or Tribunal. We make it clear that this principle does not apply to a case where an official of the Government acts as a statutory authority and sues or pursues further proceeding in its name because in that event, it will not be a suit or proceeding for or on behalf of a State/Union of India but by the statutory authority as such.”

The Writ Petition is liable to be dismissed on this ground alone but keeping public interest in view, the gross negligence of the Government Pleader is not given much importance. It is his primary duty to comment and attack the order of the Settlement Officer condoning the enormous delay of 28 years. Neither a copy of the order was filed along with the Writ Petition nor any objection was taken in the Writ Petition. This is a second case observed by this Court during the said period and this Court has to dismiss another Writ Petition No.18806 of 2003 by a separate order today where a binding decree of the civil Court was omitted and the Writ Petition was filed with a delay of nearly 16 years. This action compels this Court, at the cost of repetition, to remind the Government of the need for appointing competent counsel as Government Pleaders in the High Court and subordinate Courts in order to protect the interest of the public and

property. I pointed out the issue way back in *J.Madhusudhan Reddy v. Government of A.P., Rep.by Principal Secretary, Municipal Administration, Secunderabad, Hyderabad* (W.P.No.7001 of 2004, dated 29.04.2014) and later on the Supreme Court took note of the same situation in relation to the States of Punjab and Haryana in *State of Punjab v. Brijeshwar Singh Chahal*² and the relevant observations of the Court are as follows:

“17. We have not been able to persuade ourselves to accept the view that even when the appointments are made to offices heavily remunerated from the public exchequer the same can or ought to remain unregulated. That is particularly so when those appointed are expected by the very nature of their appointment to discharge important public function affecting not only State interest but the quality of justice which the courts administer. There is in the case of Punjab and Haryana not even a semblance of any selection process in the matter of appointment of those chosen for the job leave alone a process that is credible in terms of its fairness and objectivity. The practice of making appointments in disregard of what is expected of a functionary sensitive to the demands of fairness and equality of opportunity even when in vogue for long, runs contrary to the true legal position settled by a long line of decisions to which we shall presently refer. The dominant purpose which ought to permeate any process of selection and appointment namely “protection of public interest” in courts by availing services of the most meritorious is clearly defeated by the method that the States have been following and continue to follow. What is regrettable is that even after the pronouncements of this Court have settled, the principles on which public authorities are required to act while discharging their functions, the States continue to harp on the theory that in the matter of engagement of State Counsel they are not accountable and that the engagement is only professional and/or contractual, hence, unquestionable. It is, in our view, too late in the day for any public functionary or Government to advance such a contention leave alone expect this Court to accept the same. If a Government Counsel discharges an important public function and if it is the primary duty of those running the affairs of the Government to act fairly, objectively and on a

² (2016) 6 SCC 1

non-discriminatory basis, there is no option for them except to choose the best at the Bar out of those who are willing and at times keen to work as State Counsel. It is also their duty to ensure that the process by which the best are selected is transparent and credible. Abdicating that important function in favour of the Advocate General of the State who, in turn, has neither the assistance of norms or procedure to follow nor a mechanism for assessment of merit will be self-defeating. We regret to say that in the matter of appointment of State Counsel, the States of Punjab and Haryana have much to do to reform the prevalent system which reform is in our opinion long overdue.

...

Re: Question No.3

19. It is by now, fairly well settled that not only the Government but all public bodies are trustees of the power vested in them and custodians of public interest. Discharge of that trust in the best possible manner is the primary duty of those in charge of the affairs of the State or public body. This necessarily implies that the nature of functions and duties including the power to engage, employ or recruit servants, agents, advisors and representatives must be exercised in a fair, reasonable, non-discriminatory and objective manner. It is also fairly well settled that duty to act fairly and reasonably is a facet of 'Rule of Law' in a constitutional democracy like ours. A long line of decisions of this Court over the past five decades or so have ruled that arbitrariness has no place in a polity governed by rule of law and that Article 14 of the Constitution of India strikes at arbitrariness in every State action. We may gainfully refer to some of these decisions, not so much to add to their content as to remind ourselves that we have come a long way in the matter of settling the contours of the doctrine of Rule of Law of which equality is one significant feature.

...

35. On the question of public interest involved in the appointment of lawyers, this Court in *State of U.P. v. U.P. State Law Officer's Assn.*, ((1994) 2 SCC 204) unequivocally declared that the Government or the public body represents public interest and whoever is in charge of running their affairs is no more than a trustee or a custodian of public interest. Protection of public interests in the best possible manner is their primary duty. It follows that public bodies are under an obligation to the society to take the best possible steps to safeguard such interests. That obligation in turn casts on them the duty to engage the most competent servants, agents, advisers etc. Even in the matter of selection of lawyers, those who are running the

Government or the public bodies are under an obligation to make earnest efforts to select the best from the available lot. This is more so because the claims made by and/or against the public bodies are monetarily substantial and socially crucial with far-reaching consequences.

36. This Court while dealing with the third dimension touching the mode of appointment of lawyers declared that in conformity with the obligation cast upon them those handling the affairs of the State are duty-bound to select the most meritorious, whatever the method adopted for such selection and appointment may be. It must be shown that a search for the meritorious was undertaken and that appointments were made only on the basis of the merit and not for any other consideration. The following passage is in this regard apposite: (State of U.P. v. U.P.State Law Officers' Assn. (1994) 2 SCC 204)

“18. The mode of appointment of lawyers for the public bodies, therefore, has to be in conformity with the obligation cast on them to select the most meritorious. An open invitation to the lawyers to compete for the posts is by far the best mode of such selection. But sometimes the best may not compete or a competent candidate may not be available from among the competitors. In such circumstances, the public bodies may resort to other methods such as inviting and appointing the best available, although he may not have applied for the post. Whatever the method adopted, it must be shown that the search for the meritorious was undertaken and the appointments were made only on the basis of the merit and not for any other consideration.”

(emphasis supplied)

37. In State of U.P. v. Johri Mal ((2004) 4 SCC 714) a three-Judge Bench of this Court had an occasion to deal with somewhat similar question that arose once again in relation to appointment of government lawyers in the State of U.P. This Court reviewed the decisions earlier delivered and ruled that public interest would be safeguarded only when good and competent counsel are appointed by the State. No such appointments should, declared this Court, be made for pursuing a political purpose or for giving some undue advantage to any particular section. The State should replace an efficient, honest and competent lawyer only when it is in a position to appoint a more competent lawyer only when it is in a position to appoint a more competent lawyer in his place, observed this Court. The following passage is apposite in this regard:

“44. Only when good and competent counsel are appointed by the State, the public interest would be safeguarded. The State while appointing the public prosecutors must bear in mind that for the purpose of upholding the rule of law, good administration of justice is imperative which in turn

would have a direct impact on sustenance of democracy. No appointment of Public Prosecutors or District Counsel should, thus, be made either for pursuing a political purpose or for giving some undue advantage to a section of people. Retention of its counsel by the State must be weighed on the scale of public interest. The State should replace an efficient, honest and competent lawyer, inter alia, when it is in a position to appoint a more competent lawyer. In such an event, even a good performance by a lawyer may not be of much importance.”

(emphasis supplied)

38. While dealing with the nature of office the Government Counsel hold, this Court in Johri Mal case declared that the State Government Counsel holds an office of great importance. They are not only officers of the court but also the representatives of the State and that courts repose a great deal of confidence in them. They are supposed to render independent, fearless and non-partisan views before the court irrespective of the result of litigation which may ensue. So also the Public Prosecutors have great responsibility. They are required to perform statutory duties independently having regard to various provisions contained in the Code of Criminal Procedure. The State Government Counsel represents the State and thereby the interest of the general public before a court of law. This requires that Government Counsel have character, competence, sufficient experience as also standing at the Bar. The need for employing meritorious and competent persons to maintain the standard of the high office cannot be minimized, observed the court, particularly, when the holders of the post have a public duty to perform. The Court also expressed anguish over the fact that in certain cases the recommendations are made by the District Magistrate having regard to the political affinity of the lawyers to the party in power and that State is not expected to rescind the appointments with the change in the Government because a new party has taken over charge of the Government. This Court also recognized the age-old tradition of appointing the District Government Counsel on the basis of the recommendations of the District Collector in consultation with the District Judge. The fact that the District Judge, who is consulted while making such appointment knows the merit, competence and capability of the lawyer concerned, was also recognized by the Court.”

Thus the importance of competent Government Pleaders need not be further stressed. The times are changing with new technology and the competency is improving with

new law schools and new tools. It is high time for the Governments to scout for talent and make them accountable by passing legislation or framing appropriate regulations.

The Hill is sought to be moved and it cannot be allowed to be done for the lapse of law officers and bureaucrats. Public interest demands proper enquiry and adjudication. The custodian of the record, Government should produce the relevant record before the competent authority. The manipulators cannot be allowed to have their day with the help of the unscrupulous officers.

Having perused the orders of respondents 1 and 2, this Court feels that they are perverse and based on irrelevant evidence. Hence, the orders passed by respondents 1 and 2 are set aside, W.P.Nos.4940 & 5327 of 2003 are allowed and the matters are remanded to the 2nd respondent for consideration of the case afresh in accordance with law as valuable land of the Government in an extent of Acs.130-00 is involved in the present litigation.

Consequently, W.P.Nos.22863 & 23039 of 2002 are dismissed. The parties are given liberty to adduce any additional evidence on their behalf. In view of long delay in the case, the 2nd respondent is directed to dispose of the case

as expeditiously as possible and not later than six months from the date of receipt of a copy of this order. The District Collector shall see that the record available with the Government is produced before the 2nd respondent in order to enable the 2nd respondent to come to a just conclusion.

The miscellaneous petitions pending in these Writ Petitions, if any, shall stand closed. There shall be no order as to costs.

JUSTICE A.RAMALINGESWARA RAO

17th July, 2017
rkk

Note: Mark a copy of this order to the Principal Secretary to Government, Revenue Department; Secretary to Government, Law, Secretariat, Velagapudi, Amaravati; and District Collector, Vizianagaram.

B/o.
rkk

