

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE N.BALAYOGI

Writ Petition No.4444 of 2018

ORDER: {Per Hon'ble Sri Justice Ramesh Ranganathan }

The relief sought for in this writ petition is for a mandamus to declare the action of the respondents, in removing the petitioner's name from the panel for appointment to the post of Additional Public Prosecutor of the Court of XII Additional District Judge, Vikarabad, and from the panel of III Special Sessions Judge Court for Trial of Cases relating to atrocities against women, Vikarabad, as being arbitrary, unjust and a colourable exercise of power. A consequential direction is sought to the respondents to include the name of the petitioner in the panel for appointment as Additional Public Prosecutor for the Court of XII Additional District Judge, Vikarabad and the III Special Sessions Judge Court for Trial of Cases relating to atrocities against women, Vikarabad.

The petitioner was hitherto appointed as an additional public prosecutor on 07.07.2007 in the Court of the VI Additional District & Sessions Judge (Fast Track Court), Vikarabad, Ranga Reddy District for a period of three years. He was appointed thereafter on 09.05.2013 as an Additional Public Prosecutor in the Court of the Additional District & Sessions Judge, Vikarabad for a period of three years. The petitioner's grievance is that, though his name was recommended by the XII Additional District Judge, Vikarabad, the Principal District Judge, Ranga Reddy had, on the basis of an anonymous complaint, not included his name in the panel of Advocates to be appointed as Additional Public Prosecutor.

Reliance is placed by Sri P.Subash, learned counsel for the petitioner, on the executive instructions issued in G.O.Ms.No.187 dated 06.12.2000 to contend that an Additional Public Prosecutor can be

appointed for a third term, and non-inclusion of the petitioner's name solely on the basis of an anonymous complaint, is wholly unjustified.

G.O.Ms.No.187 dated 06.12.2000, titled the "*Andhra Pradesh Law Officers (Appointment and Conditions of Services) Instructions, 2000*", are administrative/executive instructions issued in the exercise of the power conferred on the Government under Article 162 of the Constitution of India. These executive instructions do not have statutory sanction and cannot, ordinarily, be enforced in proceedings under Article 226 of the Constitution of India (**J.R. Raghupathy v. State of A.P**¹ and **Union of India v. S.L. Abbas**²).

Even otherwise, clause 5(i) of the aforesaid executive instructions stipulates that appointment of Law Officers in all Courts and Tribunals, subordinate to the High Court, shall be made on the basis of the recommendations of the District Collector concerned who shall ascertain the views of the concerned District and Sessions Judge before making the recommendations. Clause 5(2) requires the District Collector to prepare a panel of Advocates well in advance, before expiry of the term of incumbents, and send the same to the Government for consideration. Clause (8) relates to the term of Law Officers and, thereunder, a Law Officer shall ordinarily be appointed for a term of three years; the Law Officers, so appointed, may be considered for a second term, if the Government is satisfied that he has proven efficiency, high rate of success and good performance; and for a third term in exceptional cases.

As noted hereinabove, the petitioner was hitherto appointed as an Additional Public Prosecutor and served for two terms, *albeit* in two different Courts. In terms of Clause (8) of the Executive Instructions, it is only in exceptional cases can a Law Officer be appointed for a third term. The petitioner's claim, for seeking appointment as an Additional Public

¹ AIR 1988 S.C. 1681

² (1993) 4 SCC 357

Prosecutor for a third term, is based on the premise that his name was earlier included in the panel; and, during verification by the Superintendent of Police, his name was excluded on the basis of an anonymous complaint.

As noted hereinabove, Clause 5(1) of the Executive Instructions requires the District Collector to prepare a panel after ascertaining the views of the concerned District and Sessions Judge before making the recommendations. While an illegal and arbitrary process of selection of public prosecutors/additional public prosecutors may necessitate interference, the petitioner does not point out any other illegality in the process of selection, apart from the non-inclusion of his name in the panel. Power is conferred under the executive instructions on the District Collector to send a panel of three Advocates to the Government, for appointment of one of them as the additional public prosecutor. The execution instructions require the District Collector only to ascertain the views of the Principle District Judge. The process of selection does not involve a comparative assessment of the merits of each one of the eligible candidates. As long as empanelment of Advocates is based on the views of the Principal District Judge, and such views are rational and reasonable, no interference is called for. Non-inclusion of the petitioner's name in the panel, by itself and without anything more, would not render the process of empanelment arbitrary or irrational.

It must be borne in mind that the legal profession is essentially a service-oriented profession. The relationship between the lawyer and his client is one of trust and confidence. The client engages a lawyer for personal reasons, and is at liberty to leave him also, for the same reasons. He is under no obligation to give reasons for withdrawing his brief from his lawyer. The lawyer, in turn, is not an agent of his client but his dignified, responsible spokesman. The relationship between a lawyer and a private client, is equally valid between him and the Government or

public bodies which engage the services of lawyers purely on a contractual basis either for a specified case or for a specified or an unspecified period. The nature of the contract is of professional engagement, and not that of employment. The lawyer of the Government or a public body is not its employee, but a professional practitioner engaged to do the specified work. (**State of U.P. v. U.P. State Law Officers Association**³; **Government of Andhra Pradesh v. Pushpindar Kaur**⁴). Lawyers, on the full-time rolls of the Government or public bodies cannot be compelled to continue their assignment merely because a particular term is stipulated. A lawyer, whose services have been engaged by the Government, can at any time withdraw from a particular case, and may even refuse to serve in case of any crisis of confidence. (**Pushpindar Kaur**⁴). Conversely the Government or public bodies can, at their choice, disengage the services of their Counsel.

Just as in the case of a private individual, the Government, in choosing its Counsel, must have some play in the joints, though it may be lesser in the case of choosing Government Counsel. Freedom of action, to continue or terminate the engagement, is an essential part of such relationship. (**Vilas Rao v. State of A.P.**⁵; **Pushpindar Kaur**⁴). The State Government has discretion in the matter of appointment of Law Officers. (**U.P. State Law Officers Association**³; **Pushpindar Kaur**⁴).

No Advocate can claim, as of right, that his name should be included in the panel for being appointed as an Additional Public Prosecutor, that too for a third term which, even in terms of Clause (8) of the Executive Instructions, is only in “*exceptional*” cases. Self-certification of the petitioner notwithstanding, the executive instructions require the Principal District Judge of the District to form an opinion as to whether

³ AIR 1994 SC 1654

⁴ 2003 (6) ALD 214 (DB)

⁵ 1993 ALT Supp. (1) 588

the Advocate, who seeks appointment for a third term, falls under the “*exceptional*” category.

Sri O.Swaroop, learned counsel for the 5th respondent, submits that the petitioner’s allegation of his name being deleted on the basis of an anonymous compliant is not true; and, as he had already worked for two terms, it was decided not to recommend his name for a third term, as he was not found to fall in the “*exceptional*” category. It is wholly unnecessary for us to dwell on this aspect, as the jurisdiction of this Court, under Article 226 of the Constitution of India, cannot be invoked by an Advocate seeking a mandamus that his name should be included in the panel, as that would require this Court to substitute its views for that of the Principal District Judge, or the District Collector, which is impermissible.

We see no reason, therefore, to interfere with the process of selection, being undertaken, for appointment of Additional Public Prosecutors, at the behest of an Advocate who claims that he should be appointed as an Additional Public Prosecutor for a third term.

The Writ Petition fails and is, accordingly, dismissed. Miscellaneous Petitions pending, if any, shall stand closed. There shall be no order as to costs.

(RAMESH RANGANATHAN, J)

(N.BALAYOGI, J)

25th July, 2018
JSU

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Date: 25.07.2018

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