

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment Reserved on 06.01.2020****Judgment Delivered on 29.01.2020****Writ Appeal No. 357 of 2019**

*{Arising out of order dated 14.05.2019 passed by the learned Single Judge in Writ
Petition (C) No. 804 of 2019}*

- Uttam Kumar Pandey, S/o Shri B.P. Pandey, aged about 63 years, Advocate, R/o Sai Vihar Colony, Behind Sai Temple, Tifra, Bilaspur – 495001 (Chhattisgarh)

---- Appellant**Versus**

1. State of Chhattisgarh, Through the Secretary, Department of Law, Naya Mantralaya, Atal Nagar, Raipur – 492002 (C.G.)
2. The Advocate General, Government of Chhattisgarh, Advocate General Office, Bodri, Bilaspur – 495220 (C.G.)
3. Shri Rajneesh Singh Baghel, S/o Shri Samarjeet Singh Baghel, Deputy Advocate General, Government of Chhattisgarh, Advocate General Office, Bodri, Bilaspur – 495220 (C.G.)

---- Respondents

For Appellant	:	Shri Uttam Kumar Pandey, in person.
For Respondents No.1&2/State	:	Shri Chandresh Shrivastava, Deputy Advocate General.
For Respondent No. 3	:	Shri Prafull N. Bharat and Shri Anand Shukla, Advocates.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice**Hon'ble Shri Justice Parth Prateem Sahu, Judge****CAV Judgment****Per P. R. Ramachandra Menon, Chief Justice**

1. Whether an accused in a criminal case pending trial and being prosecuted by the State can be identified and appointed by the State as a Deputy Advocate General for conducting the cases of the State, is the question mooted in this appeal. The writ of *quo warranto* sought for by the writ Petitioner, a lawyer of this Court, has been turned down by the learned Single Judge for want of any

statutory provisions/rules/norms as to the appointment to the post in question and hence the challenge.

2. Before answering the above question a brief appreciation of the given factual context is felt necessary. The Appellant is a lawyer enrolled in the year 1985 and is stated as practising in this Court after formation of the State. The 3rd Respondent is also a lawyer practising in this Court, who came to be appointed as a Deputy Advocate General, as per the proceedings dated 02.01.2019 issued by the 1st Respondent. The said appointment is stated as highly arbitrary and without making any enquiry as to the antecedents of the 3rd Respondent. It is stated as without proper consultation with the Advocate General and without any regard to the institutional integrity attached to the said office. It is also contended that it is an instance of total arbitrary exercise of power and displays wednesbury unreasonableness. Though, the Appellant had preferred representations before the 2nd Respondent/Advocate General and also before the Minister for Law, it has not yielded any positive result, which made him to file the writ petition also producing a copy of the appointment order dated 02.01.2019 as Annexure P/1, a copy of the FIR dated 12.10.2012 as Annexure P/2, a copy of the charge framed by the Judicial Magistrate First Class, Bilha as Annexure P/3 and copies of the representations preferred by the Appellant before different authorities (collectively) as Annexure P/4.
3. The prayers in the writ petition were in the following terms:

“10.1 That, the Hon'ble Court be pleased to accept the Writ Petition and pleased to decide the Petitioner's grievance.

10.2 That, the Hon'ble Court be pleased to quash and set aside the Appointment of Respondent No. 3 (Shri Rajnish Singh Baghel) as Dy. Advocate General by way of issuance of writ of quo-warranto.

10.3 Any other Order or Directions deem fit and proper may also be passed in the facts and situation of the case and in the interest of justice.”

4. The Appellant/writ Petitioner points out that the lawyers of this Court, prior to allotment of chambers were attending to their work by sitting in a common hall (on the ground floor of the Advocates Chambers), making use of their personal tables/chairs and their names were displayed with contact number. It is the contention of the Appellant that, when the 3rd Respondent was elected as the Joint Secretary of the High Court Bar Association, he removed the name plates of all the Advocates which was questioned by the Appellant insofar as he was concerned; when the 3rd Respondent allegedly beat the Appellant and threatened him of dire consequences, using filthy and abusive language. Though the matter was reported to the Police, no action was taken on time and it was more than after three weeks, that Crime No. 250 of 2012 came to be registered in respect of the offences under Sections 294, 506 and 323, read with Section 34 of the Indian Penal Code. It is pointed out that the Criminal Case No. 166 of 2014 is still pending consideration in the Judicial First Class Magistrate's Court, Bilha in this regard, against the 3rd Respondent.
5. It is the case of the Appellant that the writ petition was heard at the motion stage and without calling for any explanation/version from the Respondents, it was taken up for judgment on 12.03.2019. The verdict was passed after two months on 14.05.2019, virtually dismissing the case without properly appreciating the merit, which is put to challenge in this appeal.
6. The contention raised in the writ petition had been reiterated in the appeal as well; citing various judicial precedents rendered by the Apex Court in support thereof. The contention with reference to the 'institutional integrity' is sought to be pressed much, pointing out that, in respect of appointment to constitutional offices/public offices, institutional integrity is an in-built requirement and it needs no statutory prescription. Even a person who is 'acquitted' in a criminal case

cannot be appointed to a public post as a matter of right. Reference is made to the decisions rendered by the Apex Court in ***Centre for PIL & Another vs. Union of India & Another*** reported in **JT 2011 (2) SCC 613**, ***N. Kannadasan vs. Ajoy Khose & Others*** reported in **(2009) 7 SCC 1**, ***State of Punjab vs. Salil Sabhlok & Others*** reported in **(2013) 5 SCC 1** and ***Commissioner of Police, New Delhi & Another vs. Mehar Singh*** reported in **(2013) 7 SCC 685**; besides the verdict passed by the Division Bench of the Rajasthan High Court in Writ Petition No. 2624 of 2014. It is contented that the State Government did not make any enquiry before appointment of the 3rd Respondent as a Deputy Advocate General. It is also contended that the appointment of the 3rd Respondent as a Deputy Advocate General will not only affect the purity of the system, but also will affect the proceedings in the Court in which he is an accused, as he can easily manage things through the State prosecutor appearing in the Magistrate's Court, where he is facing the trial.

7. According to the Appellant, the litigation policy virtually prohibits any person to hold the office of a law officer, if a criminal case is pending against him, as he can easily influence the prosecution against him, which hence casts an ineligibility; moral, ethical and otherwise. It is the contention of the Appellant that pendency of a criminal case against a person may not be a disqualification to practise as an Advocate, as envisaged under Section 24A of the Advocates Act, 1961 (for short, 'Act of 1961') and the relevant rules of the Bar Council of India Rules. But, he cannot be selected and appointed as a Deputy Advocate General to represent the State; which stands on a different footing; where the question of institutional integrity counts more and the touch stone should be 'public interest' and the 'rule of law'. It is pointed out that the learned Single Judge overlooked the fact that Deputy Advocate General is expected to be a guardian and protector of civil rights of the citizens of the State and is expected to safe guard the rights of the general public, as against criminals and anti-

social elements; which requirement will not be satisfied in the case of the 3rd Respondent. It is also pointed out that absence of statutory provisions/rules/norms cited as the reason to dismiss the writ petition cannot be a ground at all, to decline the relief, in view of the law declared by the Supreme Court in ***State of Punjab & Another vs. Brijeshwar Singh Chahal & Another*** reported in **(2016) 6 SCC 1**; which clearly gives the course of action to be pursued in the said circumstance; observing that, though the case therein was in respect of the State of Punjab and Haryana, other States will also do well to perform their selection and appointment to make it more transparent, fair and objective.

8. Political connection and extraneous consideration are also the grounds raised with reference to the appointment of 3rd Respondent, expressing the anxiety as to the fate of the case pending against the 3rd Respondent. The concern is that the person who has been charge-sheeted by the State Government has become a part and parcel of the prosecuting agency and this may adversely affect the right of the Appellant, at whose instance the criminal case came to be registered against the 3rd Respondent.
9. The plea of political patronage and the appointment given as a reward is sought to be highlighted with reference to the judgment in ***State of U.P. & Another vs. Johri Mal*** reported in **AIR 2004 SC 3800**. Judicial review in respect of the appointment of the 3rd Respondent is sought for, pointing out that, though the Government may not be accountable to the Courts for the choice of a person appointed as Deputy Advocate General, the Government is accountable to the Courts in respect of the lawfulness/legality of its decisions, when it is challenged. Reliance is sought to be placed on the verdicts passed by the Apex Court in ***Ashok Lanka & Another vs. Rishi Dixit & Others*** reported in **(2005) 5 SCC 598**, ***Ashok Kumar Yadav & Others vs. State of Haryana & Others*** reported in **(1985) 4 SCC 417**, ***R.K. Jain vs. Union of India & Others*** reported

in (1993) 4 SCC 119 and *Hari Bansh Lal vs. Sahodar Prasad Mahto & Others* reported in (2010) 9 SCC 655 in this regard. By virtue of the above decisions, it is contended that the person to be appointed as a Deputy Advocate General or as a law officer of the Government must have impeccable integrity and this cannot be satisfied when he is an 'accused' in a pending criminal case. It is added that, it will not only influence the trial Court where the criminal case is pending against the 3rd Respondent, but also will prejudice the Appellant's right of free and fair trial in respect of the criminal complaint lodged by him, which led to the case pending trial. The loss caused to the public exchequer in paying salary of the 3rd Respondent appointed as a Deputy Advocate General, who is an accused in the criminal case prosecuted by the State itself, is cited as instance of patent arbitrariness and perpetuation of illegality, which hence is sought to be interdicted.

10. The 1st Respondent/State has filed their return pointing out at the very outset that Annexure P/1 order dated 02.01.2019 has been superseded by a subsequent order dated 03.08.2019 (wherein also the 3rd Respondent is stated as appointed as a Deputy Advocate General) and since the subsequent order dated 03.08.2019 has not been challenged, the appeal has become infructuous. The 1st Respondent has asserted the absence of any statutory provisions/rules/norms in the law department manual, which makes an accused not suitable for the post of Deputy Advocate General, adding that the registration of a criminal case cannot be a bar. It is also sought to be emphasized that every person is innocent until proved guilty by the competent Court of law. According to the 1st Respondent, the only requirement for being appointed as a Deputy Advocate General is that the person has to be a registered Advocate under the rules of the State Bar Council of India and that till the time the 3rd Respondent is not disqualified from continuing as an Advocate, he can be appointed to the post in question.

11. The 3rd Respondent has filed his version pointing out that the writ petition (*quo warranto*) itself is not maintainable, as a writ of *quo warranto* can be issued only in a case where a Court is satisfied that the appointment is contrary to statutory rules or where the statutory authority had proceeded, based on a decision on holy irrelevant facts, which is stated as absent in the instant case. Similar contention, as raised by the 1st Respondent/State that Annexure P/1 order dated 02.01.2019 has been superseded by the subsequent order dated 03.08.2019 and since the latter order has not been challenged in the writ petition no further steps are liable to be pursued, has been raised by the 3rd Respondent as well. The 3rd Respondent also contends that there was no attempt or steps from the part of the said Respondent to protract the trial of Criminal Case No. 166 of 2014 where he as an accused and reference is made to the various proceedings pursued by the Appellant himself, which contributed to the delay in finalization of the matter. Reference is also made to the Criminal Case No. 61 of 2014 pending before the Judicial First Class Magistrate's Court, Bilha; where the Appellant has been shown as the accused in respect of the offences under Sections 294 and 506 of the Indian Penal Code. Mere pendency of a criminal case against a Lawyer is stated as not a bar to dis-entitle him from holding any post in the office of Advocate General, which otherwise will lead to misuse or to settle personal scores, due to some enmity between the parties.
12. The Appellant has filed separate rejoinders in respect of the returns filed from the part of the Respondents No. 2 and 3, virtually reiterating the pleadings raised in the memorandum of appeal.
13. We heard Shri Uttam Kumar Pandey, the Appellant who presented the case in person, at length. We also heard Shri Chandresh Shrivastava, the learned Deputy Advocate General representing the 1st and 2nd Respondents and Shri Prafull N. Bharat, the learned counsel representing the 3rd Respondent.

14. The undisputed facts reveal that the 3rd Respondent is an 'accused' in a criminal case which is pending from the year 2012 and it is being prosecuted by the 1st Respondent/State against the 3rd Respondent. It is also a fact that the 3rd Respondent came to be appointed as a Deputy Advocate General as per Annexure P/1 dated 02.01.2019. The said order was superseded by the order dated 03.08.2019 appointing 8 persons as the Deputy Advocates General of the State, wherein the 3rd Respondent is also placed at Sl.No. 6. It is also an undisputed fact that no statutory provisions/rules/norms have been formulated by the State for selection and appointment of the law officers of the State, including to post the Deputy Advocate General-the post held by the 3rd Respondent. Since there is no dispute with regard to the law declared by the Apex Court in the various judgments sought to be relied on by the Appellant and also by the Respondents, the only question is whether they are applicable to the case in hand and if so, to what extent ?
15. Considering the nature of contentions raised and the undisputed facts, we are of the view that reference to the latest among the judgments *i.e. **Brijeshwar Singh Chahal (supra)*** will be enough to have a clear picture as to the course to be pursued. The question considered by the Apex Court therein was, precisely, whether appointment of law officers by the State Government can be questioned or the process by which such appointment is made can be assailed on the ground that it is arbitrary and violative of the Article 14 of the Constitution of India.
16. The factual matrix in the above case was that the 1st writ Petitioner was initially appointed as an Assistant Advocate General on contract basis, the term of which came to be extended and, he later was appointed as a Deputy Advocate General in a higher pay-scale. The 2nd writ Petitioner was also appointed in a similar manner as Assistant Advocate General and later as Deputy Advocate General in the State of Punjab and Haryana. Grievance in the writ petition was

against their non-absorption on regular basis; despite their having completed 8 years and 6 years respectively; while the 3rd Respondent/writ Petitioner having only a service of '4 years and 5 months' was appointed as Senior Deputy Advocate General on contract basis with a much higher salary and grade pay. The writ Petitioners questioned the fairness and legality on the part of the State in picking and choosing candidates for regular appointment/absorption. It was also pointed out that the State had not formulated any criteria, nor had they followed any norms for absorption on a non-discriminatory basis, of those who were working as law officers of the State. Accordingly, a direction was sought for to frame a policy and guidelines in this regard; to quash the appointment of the party Respondent who was absorbed in the post of Senior Deputy Advocate General and a writ of mandamus was sought for directing the State to consider the case of the Petitioners for absorption (the factual aspects in respect of transferred of Writ Petition No. 247 of 2015 mentioned in paragraph 6 of the judgment are not necessary and hence not given).

17. The questions framed for consideration by the Apex Court, as given in paragraph 7 of the above judgment are in following terms:

“7.1. (i) Whether the States of Punjab and Haryana have made any realistic assessment of their requirement before making appointments of Law Officers.

7.2. (ii) Whether the State of Punjab and Haryana have formulated any scheme, policy, norms or standards for appointing Law Officers.

7.3. (iii) Whether appointment of Law Officers by the State Governments need to be made on a fair, reasonable, non-discriminatory and objective basis; and

7.4. (iv) If answer to Questions (i), (ii) and (iii) are found in the negative, what is the way forward?”

18. Questions No. (i) and (ii) were answered in 'negative', to the effect that the State of Punjab and Haryana had not made any realistic assessment before making appointment of law officers and that the States had not formulated any scheme, policy, norms or standards for appointing the law officers. Regarding the question no. (iii) as to whether the appointment of law officers made by the State Government need to be made on a fair, reasonable, non-discriminatory and objective basis, the Apex Court observed, that it was fairly well settled that, not only the Government, but also all public bodies are trustees of the power vested in them and custodians of public interest. Discharging of the said trust in the best possible manner was the primary duty of those in charge of the affairs of the State or public body and it necessarily implies the nature of functioning and duties, which must be exercised in a fair, reasonable, non-discriminatory and objective manner. It was also observed that, it was well settled that the duty to act fairly and reasonably itself was a facet of 'rule of law' in a constitutional democracy. The Bench referred to various rulings which settled the legal position in the context of varying facts and situations. 'Paragraphs 38, 39 and 40' of the verdict in ***Brijeshwar Singh Chahal (supra)*** are important and quite relevant; which hence are extracted below:

“38. While dealing with the nature of office the Government Counsel hold, this Court in ***State of U.P. vs. Johri Mal, (2004) 4 SCC 714*** 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 minimised, 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 recognised 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 recognised by the Court.

39. The development of law in this country has taken strides when it comes to interpreting Article 14 and 16 and their sweep. Recognition of power exercisable by the functionaries of the State as a trust which will stand discharged only if the power is exercised in public interest is an important milestone just as recognition of the Court's power of judicial review to be wide enough to strike at an annul any State action that is arbitrary, unguided, whimsical, unfair or discriminatory. Seen as important dimensions of the Rule of Law by which we swear,

the law as it stands today has banished from our system unguided and uncanalised or arbitrary discretion even in matters that were till recently considered to be within the legitimate sphere of a public functionary as a repository of executive power. Those exercising power for public good are now accountable for their action, which must survive scrutiny or be annulled on the first principle that the exercise was not for public good in that the same was either mala fide, unfair, unreasonable or discriminatory. Extension of the principle even to contractual matters or matters like engagement of Law Officers is symbolic of the lowering of the threshold of tolerance for what is unfair, unreasonable or arbitrary. The expanding horizons of the jurisprudence on the subject both in terms of interpretation of Article 14 of the Constitution as also the Court's willingness to entertain pleas for judicial review is a heartening development on the judicial landscape that will disentitle exercise of power by those vested with it as also empower those affected by such power to have it reversed if such reversal is otherwise merited.

40. The question whether a fair, reasonable and non-discriminatory method of selection should or should not be adopted can be viewed from another angle also equally if not more important than the need for preventing any infringement of Article 14. The State counsel appears for the State Government or for public bodies who together constitute the single largest litigant in our Court system. Statistics show that nearly 80% of litigation pending in the courts today has State or one of its instrumentalities as a party to it. State Counsel/counsel appointed by public bodies thus represent the largest single litigant or group engaged in litigation. It is also undeniable that for a fair, quick and satisfactory adjudication of a cause, the assistance which the

Court gets from the Bar is extremely important. It is at times said that the quality of judgment or justice administered by the courts is directly proportionate to the quality of assistance that the courts get from the Counsel appearing in a case. Our system of administration of justice is so modelled that the ability of the lawyers appearing in the cause to present the cases of their respective clients assumes considerable importance. Poor assistance at the Bar by counsel who are either not sufficiently equipped in scholarship, experience or commitment is bound to adversely affect the task of administration of justice by the Court. Apart from adversely affecting the public interest which State counsel are supposed to protect, poor quality of assistance rendered to the courts by State Counsel can affect the higher value of justice itself. A fair, reasonable or non-discriminatory process of appointment of State Counsel is not thus demanded only by the rule of law and its intolerance towards arbitrariness but also by reason of the compelling need for doing complete justice which the Courts are obliged to do in each and every cause. The States cannot in the discharge of their public duty and power to select and appoint State counsel disregard either the guarantee contained in Article 14 against non-arbitrariness or the duty to protect public interest by picking up the best among those available and willing to work nor can the States by their action frustrate, delay or negate the judicial process of administration of justice which so heavily banks upon the assistance rendered by the members of the Bar.”

19. The State Government counsel, as held by the Apex Court, holds an office of great importance and they are not only the officers of the Court, but also the representatives of the State, by virtue of which the Court reposes a great deal of confidence in them. Hence they are supposed to render independent,

fearless and non-partisan view before the Court. The Apex Court held that the State Government counsel represents the State and thereby the interest of general public before a Court of law; which requires that Government counsel must have character, competence and sufficient experience, as also standing at the Bar. The Apex Court held that the power to appoint the State counsel cannot be exercised arbitrarily, whimsically or in an un-canalized manner, for, any such exercise will fall foul of Article 14 of the Constitution of India and the rule of law to which country is committed. The propositions which are found as legally unexceptionable have been summed up in 'paragraph 41' of the said verdict, as extracted below:

“41. To sum up, the following propositions are legally unexceptionable:

41.1. The Government and so also all public bodies are trustees of the power vested in them.

41.2. Discharge of the trust reposed in them in the best possible manner is their primary duty.

41.3. The power to engage, employ or recruit servants, agents, advisors and representatives must like any other power be exercised in a fair, reasonable, non-discriminatory and objective manner.

41.4. The duty to act in a fair, reasonable, non-discriminatory and objective manner is a facet of the Rule of Law in a constitutional democracy like ours.

41.5. An action that is arbitrary has no place in a polity governed by Rule of Law apart from being offensive to the equality clause guaranteed by Article 14 of the Constitution of India.

41.6. Appointment of Government Counsel at the district level and equally so at the High Court level, is not just a professional engagement, but such appointments have a “public element” attached to them.

41.7. Appointment of Government Counsel must like the

discharge of any other function by the Government and public bodies, be only in public interest unaffected by any political or other extraneous considerations.

41.8. The Government and public bodies are under an obligation to engage the most competent of the lawyers to represent them in the courts for it is only when those appointed are professionally competent that public interest can be protected in the courts.

41.9. The Government and public bodies are free to choose the method for selecting the best lawyers but any such selection and appointment process must demonstrate that a search for the meritorious was undertaken and that the process was unaffected by any extraneous considerations.

41.10. No lawyer has a right to be appointed as a State/Government Counsel or as Public Prosecutor at any level, nor is there any vested right to claim an extension in the terms for which he/she is initially appointed. But all such candidates can offer themselves for appointment, re-appointment or extension in which event their claims can and ought to be considered on their merit, uninfluenced by any political or other extraneous considerations.

41.11. Appointments made in an arbitrary fashion, without any transparent method of selection or for political considerations will be amenable to judicial review and liable to be quashed.

41.12. Judicial review of any such appointments will, however, be limited to examining whether the process is affected by any illegality, irregularity or perversity/irrationality. The Court exercising the power of judicial review will not sit in appeal to reassess the merit of the candidates, so long as the method of appointment adopted by the competent authority does not suffer from any infirmity.”

It was accordingly, that the question no. (iii) was answered in the 'affirmative'.

20. Coming to the (iv)th question, it is seen that 'paragraph 51' of the judgment was corrected vide Official Corrigendum No. F3/Ed.B.J./40/2016 dated 06.10.2016. As per paragraph 51.5, it was made clear that nothing said in the earlier paragraphs of the judgment shall affect the right of the State Government to appoint any person eligible for such appointment as the Advocate General of the State in terms of the Article 165 of the Constitution of India and as per paragraph 51.6, it was clarified that, although the Court was primarily concerned with the procedure regarding selection and appointment of law officers in the State of Punjab and Haryana and although the Court had confined the directions to the said two States only, yet, the other States would do well to reform their system of selection and appointment to make the same more transparent, fair and objective, if necessary, by amending the relevant rules/regulations on the subject.
21. Coming back to the case in hand, as mentioned already, one of the main contentions raised by the Respondents (the State and the 3rd Respondent) is that Annexure P/1 order dated 02.01.2019 has already been superseded by the subsequent order dated 03.08.2019 and since the latter order has not been challenged, the matter has become infructuous. We are not impressed with the said submission. The appeal is continuation of the original proceedings. The challenge in the writ petition was against Annexure P/1 order dated 02.01.2019 and the final verdict was passed, at the motion stage, by the learned Single Judge on 14.05.2019. The writ appeal is dated '08.07.2019' and copy of the same was served to the office of Advocate General on the next day *i.e.* 09.07.2019. The appeal was listed before the Court for the first time on 07.08.2019. There was no need, necessity or occasion for the Appellant to have challenged the order dated 03.08.2019 in the writ petition filed and finalized earlier. In this writ appeal, the grievance is against the course pursued by the learned Single Judge in declining interference to the prayers sought for, as per

the verdict dated 14.05.2019. That apart, it is very much evident, that the name of the 3rd Respondent who was appointed as Deputy Advocate General vide Annexure P/1 order dated 02.01.2019, was very much retained in the subsequent order dated 03.08.2019 as well and hence, it does not tilt the balance in any manner.

22. During the course of hearing, it was submitted by the learned counsel appearing for the 1st Respondent/State, to a specific question raised by this Court as to the verification of the credentials of the persons identified and selected to be appointed as the State counsel, that involvement of the 3rd Respondent as an 'accused' in a criminal case was not known to the Government at the time of appointment.
23. This by itself shows that no effort was taken to verify the antecedents of the person concerned, and to consider whether he was fit enough to be appointed as a State counsel. The stand of the 1st Respondent in the return filed is that, the sole requirement, was that he should be a 'practising Advocate'; which cannot be accepted as such, in view of the observations made by the Apex Court in the judgment discussed above. The Respondents contend that the decisions sought to be relied on by the Appellant, particularly, that of the Rajasthan High Court are not applicable as the instances involved in the said case to set aside the appointment of the said counsel were involving the offences under Sections 376, 420 etc. of the Indian Penal Code; whereas the instant case, it is only in respect of Sections 294, 506, 323, read with Section 34 of the Indian Penal Code. The 3rd Respondent contends that no particulars of any case were sought for and hence he had no occasion to mention the pendency of the criminal case against him. It is contended that there is no suppression of any material fact in this regard, so as to constitute any 'moral turpitude' as discussed by the Apex Court in **Devendra Kumar vs. State of Uttaranchal & Others** reported in (2013) 9 SCC 363. The version of the 3rd

Respondent also reveals that the 1st Respondent/State Government did not bother much about the credentials of the person to be selected and appointed as Deputy Advocate General and no enquiry was made in this regard, atleast to satisfy themselves.

24. The process and procedure cannot be justified by the 1st Respondent/State simply saying that 'a person is innocent until found guilty' and that registration of a criminal case is not a bar for a person to practise as an Advocate under Section 24A of the Act of 1961. We are aware of the provisions of the Advocates' Act of 1961, but here the question is something different. The right to practise in terms of Advocates' Act of 1961 originates from the constitutional right guaranteed under Article 19 (1) (g) of the Constitution of India. Coming to the right to be engaged as a State counsel, there is no vested right as made clear by the Apex Court in the judgment discussed above. It has to be by way of selection and not by way of any political interference or other extraneous considerations. 'Eligibility', as made clear by the Apex Court, is different from 'suitability' and all persons found suitable by the Government should be eligible persons. Judicial scrutiny is possible in respect of the question of considering the 'eligibility', though it may not be attracted in respect of the 'suitability' expressed by the State.
25. The Apex Court in ***Brijeshwar Singh Chahal (supra)*** has categorically held that the appointment of 'law officer' is not just a professional engagement, but a public element is attached to it. It has also been categorically declared that, judicial review of the process is permissible, even when the engagement of the Government counsel may be 'contractual' in nature. As made clear by the Apex Court, if there is no legalistic assessment of the requirements of the law officers before making appointments, the inappropriate appointment would make it against the rule of law, against public faith in the fairness in system and will be against public interest and administration of justice, which could be stopped by

exercising the power of judicial review. This being the position, the observation made by the learned Single Judge to decline interference, pointing out that no statutory provisions/rules/norms with regard to the appointment of Deputy Advocate General was pointed out by the writ Petitioner is not correct or sustainable. Even in the absence of any statutory provisions/rules/norms, the law declared by the Apex Court in ***Brijeshwar Singh Chahal (supra)*** remains to be the law of the land, by virtue of Article 141 of the Constitution of India. In the said circumstances, the observation made in the '**paragraph 51.6**' of the verdict in ***Brijeshwar Singh Chahal (supra)*** that other States also would do well to reform their system of selection in the appointment in the above regard, to make it more transparent, fair and objective, if necessary, by amending the relevant rules/regulations on the subject would govern the field.

26. There is an observation in the judgment under challenge that, if pendency of a criminal case is to be treated as a hurdle against appointment of law officers, there is a chance for persons with personal enmity to file cases against such other persons being appointed as Government counsel and may call for their removal with reference to criminal case, virtually misusing the said norm. The filing of a criminal case by a person of vested interest after appointment against a Government counsel is different from appointing a person who is already an accused. In the instant case, admittedly Annexure P/2 crime was registered against the 3rd Respondent way back in the year 2012, on the basis of a compliant preferred by the Appellant. At that point of time, it was beyond the imagination of anybody including the Appellant that, in the year 2019 the 3rd Respondent would get appointed as a Deputy Advocate General and hence it could be stalled by filing the said case. The steps pursued by the Appellant to have filed the case in the year 2012 cannot be said as a 'misuse' of the provision, with reference to the appointment of the 3rd Respondent as a Deputy Advocate General.

27. Another aspect which appears to be more important is that, the criminal case pending against the 3rd Respondent is not on the basis of a 'private complaint' preferred by the Appellant. It is a case registered by the Police. Unlike a civil case, in the pending criminal case against the 3rd Respondent, the prosecutor is none other than the State. The State is prosecuting the offence, since the offence is virtually against the society and the rule of law. This being the position, the prosecution proceedings pursued by the State against the 3rd Respondent, being in the interest of the general public; there is force in the submission made by the Appellant that the State funds *i.e.* tax payers' money cannot be utilized for giving rewards by way of salary to such an 'accused' being proceeded against by the State, on appointing him as Deputy Advocate General. It was obligatory for the State to collect the particulars of the antecedents of the persons concerned to assess the eligibility and suitability to be appointed as Government Counsel/Deputy Advocate General.
28. When the State is prosecuting a criminal case against the 3rd Respondent for the offence under Sections 294, 506 and 323, read with Section 34 of the Indian Penal Code, which is pending for nearly 7 years, what will be the fate of the said case, when the said accused is picked up to be appointed as Deputy Advocate General and to represent the State in this Court is a disturbing fact. The apprehension expressed by the Appellant, to get a fair deal, cannot be simply ruled out. We do not express any opinion as to the merit of the criminal case pending against the 3rd Respondent. We are only making it clear that no distinction can be made with reference to the nature of the offence in the pending criminal case for the purpose of selection and appointment as a Government counsel.
29. In the above circumstances, we are of the firm view that the matter requires reconsideration by the Government, in the light of the law declared by the Apex Court in ***Brijeshwar Singh Chahal (supra)***. So as to facilitate such exercise,

the judgment passed by the learned Single Judge stands set aside. In view of the law declared by the Supreme Court in ***Salil Sabhlok (supra)*** that, even if *quo warranto* will not lie, declaration can still be given by the Court; we declare that the course pursued by the 1st Respondent/State can't but be deprecated; being not in conformity with the law declared by the Apex Court in ***Brijeshwar Singh Chahal (supra)***. Accordingly, we direct the 1st Respondent to reconsider the matter and pass appropriate orders in conformity with the law declared by the Supreme Court in ***Brijeshwar Singh Chahal (supra)*** as expeditiously as possible, at any rate within a period of one month from the date of receipt of a copy of this judgment.

30. The appeal is allowed to the said extent. No costs.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge