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IN THE HIGH COURT OF DELHI AT NEW DELHI*Reserved on: 1st May, 2023**Date of decision: 5th July, 2023*

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W.P.(C) 3364/2023 and CM APPL. 13051/2023**NAWAL KISHORE JHA**

..... Petitioner

Through: Petitioner in person. (M:9810442918)

versus

THE STATE AND ORS

..... Respondents

Through: Mr. Satyakam, ASC with Ms. Pallavii Singh, Advocate.

Mr. Gautam Narayan, Standing Counsel for DHC with Ms. Asmita Singh, Mr. Harshit Goel, Ms. Akriti Arya, Advocates.

CORAM:**JUSTICE PRATHIBA M. SINGH****JUDGMENT****Prathiba M. Singh, J.**

1. This pronouncement has been done through hybrid mode.
2. In the present petition, the role of the High Court in the appointment of Additional Public Prosecutors (*hereinafter*, 'APP/APPs') under Section 24(1) of the Code of Criminal Procedure (*hereinafter*, 'CrPC') has been called in question.
3. The Petitioner-Mr. Nawal Kishore Jha, an Advocate enrolled since 1998, has filed the present petition, seeking directions to place his candidature before the Full Court, and approval of his empanelment/nomination as an APP.

Background

4. The Respondent No.1-GNCTD issued an advertisement for recruitment of Standing Counsel Criminal, Additional Standing Counsel



Criminal, and APP in the year 2014-15. The Petitioner had applied for the post of APP, however, his application remained pending. According to the Petitioner, his name has been put on hold for the post of the APP since 2014/2015.

5. In 2022, the GNCTD again called for applications for the post of APPs. The Petitioner had submitted a fresh application. A Committee constituted by the GNCTD had cleared his name, and forwarded a proposal for appointment of 44 lawyers as APPs to the High Court of Delhi.

6. The proposal forwarded by the GNCTD was placed before the Full Court on 4th April 2022. In June 2022, the Petitioner states that he was informed that except four candidates, all other names had been approved by the High Court, and his candidature was deferred without providing any reasons. He thereafter filed a written representation on 11th July 2022 addressed to Hon'ble The Chief Justice of the High Court, which according to him was not duly considered. The prayer in the writ petition is as under:

“a). Issue a writ, order or directions in the nature of certiorari/mandamus or any other appropriate writ to the respondent no.3, Registrar of Hon'ble High Court of Delhi for placing/consideration of the name of the Petitioner/Advocate before the Full Court of the Hon'ble High Court of Delhi, as recommended by the Government of NCT of Delhi and approved by the Hon'ble Lieutenant Governor for empanelment/nomination as the APP and send it for the notification with the others name to the Government of NCT of Delhi.

b). Issue a writ, order or directions in the nature of certiorari/mandamus or any other appropriate writ to the Respondent no.3, Registrar of Hon'ble High Court of Delhi for placing/consideration of the name of the Petitioner/Advocate writ petition as a representation



before the Full Court of the Hon'ble High Court of Delhi in its next meeting or as soon as possible, as recommended by the Government of NCT of Delhi and approved by the Hon'ble Lieutenant Governor for empanelment/nomination as the APP and send it for the notification with the others name to the Government of NCT of Delhi if passed by the Hon'ble High Court of Delhi accordingly prayed for.

c). Issue a writ, order or directions in the nature of certiorari/mandamus or any other appropriate writ to the Respondent no. 1 and 2 to release fees as given to others counsels/APP's, from the year 2014/15 till 2022 as applicable in the case of the petitioner accordingly to meet out the justice.

d). Issue a writ/notice order or directions in the or nature any of certiorari/mandamus other appropriate writ to the respondents to file their counter/reply before this Hon'ble Court in the above said case.

e). Issue a writ/notice order or directions in the nature of certiorari/mandamus or any other appropriate writ direction to the Respondent no .1 and 2 not to fill the vacant seat of the APP at least keep one seat vacant for the petitioner, till the pending of this writ petition before this Hon'ble Court.

f). Pass such other or further orders as this Hon'ble Court may deem just and proper in the facts and circumstances of the case.”

Submissions

7. The Petitioner, appearing in person, submits on the strength of the judgment rendered in the ***State of Punjab v. Brijeshwar Singh Chahal [(2016) 6 SCC 1]***, that the entire appointment process of APPs is to be carried out by the State Government, and the Chief Justice of the High Court may record their views in the matter with respect to the suitability of the candidates.



8. The State Government has the freedom to appoint APPs having regard to the views expressed by the Chief Justice of the High Court regarding their merit and suitability. Thus, the role of the Chief Justice is primarily only recommendatory in nature, and nothing further.

9. He further submits that till date no reasons have been conveyed to him as to why the Petitioner's candidature was not accepted or approved, despite the entire list of accepted candidates being available in public domain. Since 2014, the Petitioner's name for being appointed as an APP was recommended by the GNCTD, but the same had not been approved by the High Court. Such circumstances had, in fact, deprived the Petitioner of his right to be acting as an APP on behalf of the GNCTD.

10. To buttress the above submissions, Petitioner relies on paragraph 51.3 of the judgment in *State of Punjab (supra)* maintaining that the GNCTD should be free to appoint suitable candidates for the post of APP, having regard to the views expressed by the Chief Justice regarding their merit and suitability.

11. Mr. Gautam Narayan, Id. Counsel appearing for the Respondent No. 3-Registrar, Delhi High Court filed a list of dates detailing the entire chronology of the process for the appointment of candidates for the post of APPs, along with the judgement in *State of Punjab (supra)*.

12. He submits that as per the said list of dates, he has placed on record the entire sequence of events that transpired after the GNCTD sent the proposal for the consideration by the High Court. The matter was considered by the Full Court of the High Court on 4th April 2022, after which a Sub-Committee was constituted on 11th April 2022. The said Sub-Committee, consisting of three Judges, interacted with all the candidates on three dates



i.e. 19th April 2022, 29th April 2022 and 17th May 2022. Out of 44 names, 40 were approved on 21st May 2022.

13. Regarding the four remaining names, the candidature of the Petitioner was not approved. This decision was approved by the Full Court on 25th May 2022. The list was then forwarded to the GNCTD on 3rd June 2022. The Petitioner, along with two other persons, sent their respective representations on 11th July 2022. The same were again referred to the Sub-Committee on 18th July 2022 and the said representation of the three lawyers was rejected by the Full Court 9th September 2022.

14. Mr. Narayan Id. Counsel asserts that since this decision of the Committee was approved by the Full Court on two separate occasions, the procedure was prescribed in paragraph 50 of the *State of Punjab (supra)* has been fully complied with. Since the representations made by the Petitioner have already been considered by this Court, there appears to be no grounds to intervene in a decision that has already been made.

15. In response to the submission that the said decision had deprived the Petitioner of his right to be acting as an APP, Mr. Narayan, Id. Counsel submits that no lawyer has a vested right to be appointed as an APP.

16. On behalf of GNCTD, Mr. Satyakam, Id. ASC submits that the GNCTD has raised no objection in respect of the exercise undertaken by this Court in the appointment of the APPs.

Analysis

17. Heard. Public Prosecutors ('PPs') are appointed under Section 24 of the CrPC which reads as under:

"24. Public Prosecutors.- (1) For every High Court, the Central Government or the State Government



shall, after consultation with the High Court, appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors, for conducting in such Court, any prosecution, appeal or other proceeding on behalf of the Central Government or State Government, as the case may be.

(2) The Central Government may appoint one or more Public Prosecutors for the purpose of conducting any case or class of cases in any district or local area.

(3) For every district, the State Government shall appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors for the district: Provided that the Public Prosecutor or Additional Public Prosecutor appointed for one district may be appointed also to be a Public Prosecutor or an Additional Public Prosecutor, as the case may be, for another district.

(4) The District Magistrate shall, in consultation with the Sessions Judge, prepare a panel of names of persons, who are, in his opinion fit to be appointed as Public Prosecutors or Additional Public Prosecutors for the district.

(5) No person shall be appointed by the State Government as the Public Prosecutor or Additional Public Prosecutor for the district unless his name appears in the panel of names prepared by the District Magistrate under sub- section (4).

(6) Notwithstanding anything contained in sub- section (5), where in a State there exists a regular Cadre of Prosecuting Officers, the State Government shall appoint a Public Prosecutor or an Additional Public Prosecutor only from among the persons constituting such Cadre: Provided that where, in the opinion of the State Government, no suitable person is available in such Cadre for such appointment that Government may appoint a person as Public Prosecutor or Additional Public Prosecutor, as the case may be, from the panel of names prepared by the District Magistrate under



sub- section (4).

(7) A person shall be eligible to be appointed as a Public Prosecutor or an Additional Public Prosecutor under sub- section (1) or sub- section (2) or sub- section (3) or sub- section (6), only if he has been in practice as an advocate for not less than seven years.

(8) The Central Government or the State Government may appoint, for the purposes of any case or class of cases, a person who has been in practice as an advocate for not less than ten years as a Special Public Prosecutor.

(9) For the purposes of sub- section (7) and sub- section (8), the period during which a person has been in practice as a pleader, or has rendered (whether before or after the commencement of this Code) service as a Public Prosecutor or as an Additional Public Prosecutor or Assistant Public Prosecutor or other Prosecuting Officer, by whatever name called, shall be deemed to be the period during which such person has been in practice as an advocate. ”

18. The above provision contemplates appointment of three categories of PPs viz.,:

- i. Public Prosecutors (‘PPs’).
- ii. Additional Public Prosecutors (‘APPs’).
- iii. Special Public Prosecutors (‘SPPs’).

19. Both the Central and State Governments are entitled to appoint such PPs for conducting matters on behalf of their respective Governments. Section 24(7) of the CrPC provides for eligibility criteria of not less than seven years for being appointed either as an PP or as an APP. As per Section 24(2) of the CrPC, PPs and APPs can be appointed for the High Court, District Courts or local areas. As for the appointment of APPs for the High Court is concerned, consultation with the High Court is contemplated.



Insofar as PPs and APPs for a particular District are concerned, the District Magistrate has to prepare a panel in consultation with the Sessions Judge.

20. The dispute raised in the present petition arises from the fact that despite the GNCTD having sent the proposal for appointment of 44 lawyers as Standing Counsel Criminal, Additional Standing Counsel and APPs, the Petitioner's candidature has been withheld, and not approved at the behest of the High Court. The Petitioner's stand is that no reasons have been conveyed to him for not approving his name, and that the concurrence of the High Court is not required.

21. The role that PPs and APPs play in the administration of justice in criminal cases has been repeatedly emphasised by the Supreme Court. In *State of U.P. v. Johri Mal [(2004) Supp. 1 S.C.R. 560]*, the Supreme Court has made important observations concerning the role played by PPs and APPs in the context of District Government Counsels ('DGCs') in the State of U.P. appointed for civil, criminal and revenue courts. The question that arose in the said case was whether the Petitioner therein, whose name was recommended for renewal as DGC (Criminal) by the District Magistrate, could assert a right of renewal for his appointment. The Allahabad High Court had allowed the writ petition, and had directed renewal. In the appeal from the decision of the High Court, the Supreme Court observed as under:

"NATURE OF OFFICE:

The District Government Counsel appointed for conducting civil as also criminal cases hold-Offices of great importance. They are not only officers of the court but also the representative of the State. The court reposes a great deal of confidence in them. Their opinion in a matter carries great weight. They are supposed to render independent, fearless and



non-partisan views before the court irrespective of the result of litigation which may ensue.

The Public Prosecutors have greater responsibility. They are required to perform statutory duties independently having regard to various provisions contained in the Code of Criminal Procedure and in particular Section 320 thereof.

The public prosecutors and the Government counsel play an important role in administration of justice. Efforts are required to be made to improve the management of prosecution in order to increase the certainty of conviction and punishment for most serious offenders and repeaters. The prosecutors should not be over-burdened with too many cases of widely varying degree of seriousness with too few assistants and inadequate financial resources. **The prosecutors are required to play a significant role in the administration of justice by prosecuting only those who should be prosecuted and releasing or directing the use of non-punitive methods of treatment of those whose cases would best be processed.**”

22. The Supreme Court also observed that as long as the procedures laid out under the CrPC are followed, which are reasonable and fair, an extension cannot be claimed as a matter of right:

“The appointments of Public Prosecutors, on the other hand, are governed by the Code of Criminal Procedure and/or the executive instructions framed by the State governing the terms of their appointments. Proviso appended to Article 309 of the Constitution of India is not applicable in their case. Their appointment is a tenure appointment. Public Prosecutors, furthermore, retain the character of legal practitioners for all intent and purport. They, of course, discharge public functions and certain statutory powers are also conferred upon them. Their duties and functions are



onerous but the same would not mean that their conditions of appointment are governed by any statute or statutory rule.

So long as in appointing a counsel the procedures laid down under the Code of Criminal Procedure are followed and a reasonable or fair procedure is adopted, the Court will normally not interfere with the decision. The nature of the office held by a lawyer vis-a-vis the State being in the nature of professional engagements, the courts are normally chary to over-tum any decision unless an exceptional case is made out. The question as to whether the State is satisfied with the performance of its counsel or not, is primarily a matter between it and the counsel. The Code of Criminal Procedure does not speak of renewal or extension of tenure.”

23. Further, the Court distinguished the appointment of DGCs on one hand, and appointment of Judges to the High Court and Supreme Court on the other hand. With regard to ‘consultation’, in the context of appointment of DGCs, the Supreme Court made the following observations:

“Appointment of the District Government Counsel cannot be equated with the appointments of the High Court and the Supreme Court Judges. A distinction must be made between professional engagement and a holder of high public office. Various doctrines and the provisions of the Constitution which impelled this Court to give meaning of ‘consultation’ as ‘concurrence’ and wherein the Chief Justice of India will have a primacy, cannot be held to be applicable in the matter of consultation between the District Magistrate and the District Judge for the purpose of preparation of a panel of the District Government Counsel.

We would, however, like to lay stress on the fact that the consultation with the District Judge must be an



effective one. The District Judge in turn would be well advised to take his colleagues into confidence so that only meritorious and competent persons who can maintain the standard of public office, can be found out.”

24. The Supreme Court then observed that the deletion of the process of consultation in Section 24(1) of the CrPC by the State of U.P. would be contrary to the decision of the Supreme Court in ***Kumari Shrilekha Vidyarthi v. State of U.P. [(1991) 1 SCC 212]***, and set aside the decision of the Allahabad High Court.

25. In ***Kumari Shrilekha Vidyarthi (supra)***, the Supreme Court had categorically held that the post of PPs is that of a public office. The observations are set out below:

“14. [...]

*In the case of Public Prosecutors also known as District Government Counsel (Criminal), there can be no doubt about the statutory element attaching to such appointments by virtue of these provisions in the CrPC, 1973. In this context, Section 321 of the CrPC, 1973, is also significant. Section 321 permits withdrawal from prosecution by the Public Prosecutor or Assistant Public Prosecutor in charge of a case, with the consent of the Court, at any time before the judgment is pronounced. This power of the Public Prosecutor in charge of the case is derived from statute and the guiding consideration for it, must be the interest of administration of justice. **There can be no doubt that this function of the Public Prosecutor relates to a public purpose entrusting him with the responsibility of so acting only in the interest of administration of justice. In the case of Public Prosecutors, this additional public element flowing from statutory provisions in the CrPC, undoubtedly, invest the Public***



Prosecutors with the attribute of holder of a public office which cannot be whittled down by the assertion that their engagement is purely professional between a client and his lawyer with no public element attaching to it.

26. Similar issues came for consideration in *State of Punjab (supra)*, where a challenge was raised against the appointment of Petitioners therein, to the post of Law Officers of the State Government such as Assistant Advocate General, Deputy Advocate General, Senior Deputy Advocate General. The aggrieved writ petitioners/Respondent No. 1 filed a writ petition against the State Government, alleging that it had not formulated any criteria or followed any norms for the absorption of law officers on a non-discriminatory basis. The petitioners/Respondent No. 1 prayed for a direction to the State Government to frame a policy, laying down guidelines for making appointment/absorption/re-designation in the office of the Advocate General. As per the Court, the following questions were to be determined:

“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 States 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 question Nos.1, 2 and 3 are found in the negative, what is the way forward?”

27. The Supreme Court again highlighted the role played by Government



counsels or PPs in the administration of justice. It also approved the decision in *Johri Mal (supra)*. The observations of the Court are set out below:

“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.”

28. After having observed as above, the conclusions of the Court in the context of appointment of PPs is set out 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 term 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.”

29. On the issue of consultation with the High Court, the Supreme Court observed that such consultation holds utmost significance, inasmuch as the opinion of the Court, where the candidate has to work, would be of relevance:

“46. Consultation with the Sessions Judge for a Public Prosecutor in the District judiciary and with the High Court for one in the High Court is statutorily prescribed because of the importance of the appointment and the significance of the opinion of the Courts where the appointee has to work, as to his or her capacity and professional ability. The statute does not admit of an appointment in disregard of the requirement of consultation. The Law Commission has, therefore, rightly held the consultative process to be a check on the power of appointment which cannot be left unregulated or uncontrolled, lest a person not suited or competent enough gets appointed to the position for other reasons or considerations. Consultation, in that sense, lends reassurance as to the professional ability and suitability of the appointee. The Commission has on that premise placed a question mark on the validity of State amendment that deletes from Section 24 of the Code of Criminal Procedure Code the need for consultation with the Sessions Judge or the High Court.”

30. On the specific procedure to be followed for the purposes of appointment of PPs and APPs, the Court has laid down the following broad criteria:



*“The third stage of the process of selection and appointment shall in the absence of any statutory provisions regulating such appointments involve consultation with the District & Sessions Judge if the appointment is at the district level and the High Court if the appointment is for cases conducted before the High Court. It would, in our opinion, be appropriate and in keeping with the demands of transparency, objectivity and fairness if after assessment and finalisation of the selection process a panel is sent to the Chief Justice of the High Court concerned for his views on the subject. The Chief Justice could constitute a Committee of Judges to review the names recommended for appointment and offer his views in regard to professional competence and suitability of candidates for such appointments. **Appointments made after such a consultative process would inspire confidence and prevent any arbitrariness.** The same procedure could be followed where candidates are granted extension in their terms of appointment in which case the Committee appointed by the government and that constituted by the Chief Justice could also look into the performance of the candidates during the period they have worked as State counsel.”*

31. Thus, the established legal position with regard to the appointment of Advocates as PPs or APPs to represent the Central or the State Government, especially, in the context of Section 24 of the CrPC, is that the candidates concerned must be competent in nature. They are expected to render independent, and non-partisan service before the Court. PPs play a significant role in the administration of justice, and also in speedy management of prosecution of offenders, criminals, etc. Therefore, PPs deserve terms of engagement that would enable them to fulfil their



responsibilities in a fair, transparent, and non-partisan manner.

32. Insofar as the role of the High Court, and the Sessions Judge is concerned in the appointment of PPs and APPs, they play an important role as PPs and other Advocates have to regularly appear before these Courts. The opinion of the Courts on the candidates' professional capacity, integrity, ability to carry out the tasks assigned can be evaluated by the Court concerned. It is for this purpose that the process of consultation has been prescribed in CrPC. The view of the High Court on the professional competency of the lawyer would play an important role in the process of appointment, though, the appointment is primarily left to the Central or the State Government. In this context, the views of the High Court would be crucial.

33. In the background of this legal position, the facts concerning the Petitioner would have to be adjudged.

34. The Supreme Court in *State of Punjab (supra)* has held that judicial review of the appointment process itself in such cases is limited. If the process is not illegal, irregular, perverse or irrational and does not suffer from any infirmity, the Court would not exercise jurisdiction in a writ petition under Article 226. The Court observed as under:

“38. [...] 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.”

35. It is not in dispute that the Petitioner's name was part of the proposal,



of a panel of 44 lawyers which was sent to the High Court by the GNCTD. As per the chronology of events handed over by Mr. Narayan, Id. Counsel, the proposal by the GNCTD was placed before the Full Court which appointed a Sub-Committee of three Sitting Judges of the High Court for conveying their views on the candidature of all 44 candidates. The said Sub-Committee interacted with all the candidates over three days. The Petitioner was also called for the said interaction. The Sub-Committee then approved the proposed names except the names of four lawyers, including that of the Petitioner. The views of the Committee were submitted to the Full Court in a sealed cover. On 25th May 2022, the Full Court conveyed its approval for appointment under Section 24(1) of the CrPC for all names, except for four names, in terms of the Sub-Committee's report.

36. The Petitioner then sent a representation to this Court in July 2022. One more candidate whose name was not approved had also sent in a representation. The representations were again consolidated by the Sub-Committee. On 9th September 2022, all representations were rejected by the Full Court. The Petitioner then approached the Supreme Court which vide order dated 10th February 2023, permitted the Petitioner to approach the High Court. The said order is reproduced below:

"1 Permission to appear and argue in person is granted.

2 The petitioner appearing in-person has an alternate remedy of moving a Petition under Article 226 of the Constitution before the High Court.

3 We decline to entertain the Writ Petition under Article 32 of the Constitution on that ground.

4 The Writ Petition is accordingly dismissed.

5 Pending applications, if any, stand disposed of."



37. Primarily, the submission of the Petitioner is two-fold. *Firstly*, that the High Court has no role to play in evaluating the suitability of the candidature of any Advocate appointed to the posts of PPs and APPs. *Secondly*, the Petitioner submits that no reasons have been conveyed by the Full Court for rejecting the Petitioner's candidature.

38. Insofar as the first issue is concerned, the legal position has already been settled by the Supreme Court, both in the case of *Johri Mal (supra)* and *State of Punjab (supra)*. Under Section 24(1) of the CrPC, consultation with the High Court is mandatory, and views of the High Court with regards to the competency, suitability, professional capability of the Advocates recommended for the position of PPs and APPs are of immense significance.

39. Further, in the present case, the decision of the Full Court also has been conveyed to the GNCTD. It has been submitted by Mr. Satyakam, Id. Additional Standing Counsel, that the GNCTD has no objection to the process of appointment of the APPs or the approval of the names conveyed by the High Court. Thus, the GNCTD has not raised any challenge in respect of the rejection or the non-approval of the Petitioner's candidature. The process of consultation that has taken place in the present case demonstrates that the GNCTD and the High Court have, in the spirit of Section 24(1) of the CrPC conducted the consultation, and arrived at a consensus/ unanimous decision. There is no difference of opinion between GNCTD and the High Court.

40. As for the second ground raised i.e., non-communication of reasons, the nature of the position of APPs, as discussed above in *Johri Mal (supra)* and *State of Punjab (supra)* and the process involved is such that it requires a broad assessment of professional capabilities, competency, ability of the



candidature. While communication of reasons is one of the requirements of natural justice, the same cannot be true in all circumstances. The principles of natural justice are not rigid rules and are flexible in their application. The extent to which they apply in a particular case will depend on the background of the statutory provision, the rights that are affected, and the consequences that may result. The Supreme Court in *National Institute of Mental Health and Neuro Sciences v. K. Kalyana Raman* [1992 Supp (2) SCC 481] observed as under:

“7. We will first consider the second point. In the first place, it must be noted that the function of the Selection Committee is neither judicial nor adjudicatory. It is purely administrative.

[...]

Administrative authority is under no legal obligation to record reasons in support of its decision. Indeed, even the principles of natural justice do not require an administrative authority or a Selection Committee or an examiner to record reasons for the selection or non-selection of a person in the absence of statutory requirement. This principle has been stated by this Court in *R. S. Dass v. Union of India* [1987]1SCR527 in which *Capoor case* (1973)1ILLJ504SC was also distinguished.

8. As to the first point we may state at the outset that giving of reasons for decision is different from, and in principle distinct from, the requirements of procedural fairness. The procedural fairness is the main requirement in the administrative action. The 'fairness' or 'fair procedure' in the administrative action ought to be observed. The Selection Committee cannot be an exception to this principle. It must take a decision reasonably without being guided by extraneous or irrelevant consideration.



[...]

It is not shown that the selection was arbitrary or whimsical or the Selection Committee did not act fairly towards Dr. Kalyana Raman. The fact that he was placed second in the parcel, itself indicates that there was proper consideration of his case and he has been treated fairly. It should not be lost sight of that the Selection Committee consisted of experts in the subject for selection. They were men of high status and also of unquestionable impartiality. The Court should be slow to interfere with their opinion.”

41. Considering the above position in ***K. Kalyana Raman (supra)***, and the facts of the present case, which involves an Advocate’s candidature for appointment of an APP, the communication of reasons may, in fact, do more harm to the candidate concerned.
42. The simple non-approval, conveyed by the High Court after undertaking a rigorous and a systematic process of scrutiny of the candidates by a Sub-Committee, and placing the same before the Full Court, is in line with the decision of the Supreme Court in ***State of Punjab (supra)***.
43. The requisite procedure has been followed in two rounds. ***Firstly***, as part of the complete list of 44 Advocates and, ***secondly***, when the Petitioner filed a representation. On both occasions, the Sub-Committee of the High Court considered the matter, and gave its recommendation to the Full Court which accepted the same. The GNCTD has also accepted this position.
44. There is no perversity or irregularity or illegality in the process that has been followed in the selection of the APPs. The consultation process between the GNCTD and the High Court is, as required in such cases,



considering the role played by PPs.

45. The Petitioner is a practicing Advocate. The communication or disclosure of any reasons in the public domain could also harm his professional standing much more than mere non-approval of his candidature as an APP. The non-approval on this occasion of engagement of PPs and APPs may not act as a bar on the Petitioner from applying again in future. If, however, reasons are sought and are in fact penned down and given to the Petitioner, it may prove to be detrimental to the Petitioner himself.

46. The consultation process does not contemplate communication of reasons as is being sought by the Petitioner. Given that the matter has been considered twice by the Full Court, and twice by the Sub-Committee and has been accepted by the GNCTD, the present petition does not call for interference of this Court exercising jurisdiction under Article 226 of the Constitution of India.

47. Accordingly, the present petition is dismissed. All pending applications are also disposed of. Nothing said in this order shall affect the future prospects of the Petitioner in any other professional engagements.

PRATHIBA M. SINGH
JUDGE

JULY 5, 2023
dj/dn