

Court No. - 1

Case :- P.I.L. CIVIL No. - 12352 of 2020

Petitioner :- Asok Pande (In-Person)

Respondent :- U.O.I. Thru. Secy. Ministry Of Law & Justice & Others

Counsel for Petitioner :- Asok Pande

Counsel for Respondent :- C.S.C.,A.S.G.

Hon'ble Pankaj Kumar Jaiswal,J.

Hon'ble Dinesh Kumar Singh,J.

1. Heard Asok Pande, petitioner-in-person, Sri Raj Kumar, learned Counsel for the respondent no.1/Union of India and Sri Ramesh Kumar Singh, learned Additional Advocate General, assisted by Sri Sanjay Sarin, learned Additional Chief Standing Counsel for respondents no. 2 and 3/State.
2. By this Public Interest Litigation under Article 226 of the Constitution of India, the petitioner, who is a practicing lawyer, has challenged para-3 of the Circular issued by the State Government dated 26.06.2020, whereby the State Government has instructed that in absence of learned Advocate General, the urgent and routine work at Allahabad shall be performed by Sri Manish Goyal, Additional Advocate General, whereas at Lucknow, the same will be performed by Sri Vinod Kumar Shahi, Additional Advocate General.
3. Petitioner, who appears in person, has submitted that the Advocate General is an important functionary of the Government of Uttar Pradesh and constitutional authority and, therefore, para-3 of the impugned Circular is unconstitutional as it appoints two Additional Advocate Generals to perform routine and urgent work of the office of the Advocate General in case he is not available at Allahabad and at Lucknow. He further submits that all the powers vested with the Advocate General for the State either by the Constitution or by the different enactments are to be performed only and only by the Advocate General either he is at Lucknow or Prayagraj (Allahabad) or at any other place in the country. In case

the Advocate General, by reason of illness or otherwise, is not available, the State Government shall appoint new incumbent as Advocate General to perform all the duties of his office. According to him, in absence of the Advocate General, work of the Advocate General cannot be entrusted to the Additional Advocate General.

4. The petitioner-in-person has drawn our attention to the judgment of the Hon'ble Kerala High Court in **M.K. Padmanabhan Vs. State of Kerala : 1978 Lab. I.C. 1336** and **M.T. Khan Vs. State of Andhra Pradesh and others (Appeal (civil) 4 of 2004, decided on 05.01.2004** and has submitted that the functions of the office of Advocate General can be performed only by the Advocate General and by none else. Therefore, para-3 of the impugned Circular is against the spirit of the Constitution as well as judgment of Hon'ble the Supreme Court rendered in **M.T. Khan (supra)**.

5. Para-3 of the impugned Circular reads as under :

"3- मा0 महाधिवक्ता के इलाहाबाद में उपस्थित न रहने की दशा में उनका अर्जेन्ट एवं रूटीन कार्य श्री मनीष गोयल, अपर महाधिवक्ता द्वारा सम्पादित किया जायेगा तथा मा0 महाधिवक्ता के लखनऊ में उपस्थित न रहने की दशा में उनका अर्जेन्ट एवं रूटीन कार्य श्री विनोद कुमार शाही, अपर महाधिवक्ता द्वारा सम्पादित किया जायेगा।"

6. In order to appreciate the submission of the petitioner-in-person, we deem it apt to reproduce Article 165 of the Constitution of India, which deals with the appointment and functions of Advocate General of the State. Article 165 reads as under:

"(1) The Governor of each State shall appoint a person who is qualified to be appointed a Judge of a High Court to be Advocate-General for the State.

(2) It shall be the duty of the Advocate-General to give advice to the Government of the State upon such legal matters, and to perform such other duties of a legal

character, as may from time to time be referred or assigned to him by the Governor and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force.

(3) The Advocate General shall hold Office during the pleasure of the Governor, and shall receive such remuneration as the Governor may determine."

7. The aforesaid Article, which provides for appointment of Advocate General for the State, provides that the Governor of each State shall appoint a person who is qualified to be appointed as a Judge of the High Court, to be Advocate General for the State. The Advocate General so appointed holds office at the pleasure of the Governor. The duty of the Advocate General is to give advice to the Government of the State upon such legal matters and to perform such other duties of a legal characters as may be referred or assigned to him by the Governor and to discharge the functions conferred on him by or under the Constitution or by any other law for the time being in force.
8. Although in terms of Article 165(3) of the Constitution of India, the office is held by the Advocate General during the pleasure of the Governor and receives such remuneration as the Governor may determine, yet the Advocate General cannot be treated as a "Government servant" and he is not the subordinate of the Government of the State. With respect to the discharge of functions and duties of his office, the Advocate General is not controlled by the Governor or the State Government because, while giving advice to the State Government upon any legal matter referred to him or whilst performing duties of a legal character assigned by the Governor or with respect to the discharge of functions conferred on him by or under the circumstances, he has to exercise his discretion, though according to best of his ability in manner which he considers best.

9. It is not the case of the petitioner that the respondent no.4 is not qualified to be appointed nor it is the case of the petitioner that he had incurred any disqualification for being appointed as the Advocate General in the State. There is no controversy with respect to the fact that the respondent no.4 is qualified to be appointed as the Advocate General. It is nowhere whispered that the respondent no.4 had incurred any disqualification at any point of time either prior to or at the time of appointment or subsequently.
10. Before referring to the various authorities referred to by the petitioner in support of his contention that there could be only one Advocate General and appointment of Additional Advocate General is impermissible under the Constitution, it is useful to refer to Article 367 of the Constitution of India.
11. In *M.K. Padmanabhan, v. State of Kerala and Anr.* (Supra), the Kerala High Court had occasion to consider the identical contention. The Division Bench of the Kerala High Court held thus:-

"The scheme of Article 165 of the Constitution appears to us, also, to some extent, at any rate, to keep the appointment to the office as separate from the functions and responsibilities appertaining to it. As noticed already, while clause (1) of the Article deals with the appointment, clause (2) provides for functions and responsibilities, and clause (3), for the duration of the office. It is here that we have to take note of Article 367 (1) of the Constitution, which provides:

367 Interpretation-(1) Unless the context otherwise requires, the General Clauses Act, 1897 shall, subject to any adaptations and modifications that may be made therein under Article 372 apply for the interpretation of this Constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of India.

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No adaptations and modifications having relevance have been brought to our notice.

Turning to the General Clauses Act, 1897, Section 13 thereof enacts:

"13. In all Central Acts and Regulations, unless there is anything repugnant in the subject or context,

(1) Words importing the masculine gender shall be taken to include females; and

(2) Words in the singular shall include the plural and vice versa."

The above provision was relied on by the State to contend that the provision in the singular shall include the plural and vice versa."

12. At this juncture, it is relevant to point out that that the petitioner was unable to point out any other provision in the Constitution, which is in any way repugnant to or unless the context otherwise requires.
13. The judgment of Division Bench of the Kerala High Court in ***M.K. Padmanabhan v. State of Kerala and Anr.*** : 1978 Lab I.C. 1336 has been followed by a Division Bench of Gauhati High Court in ***Bhadreswar Tan Ti v. S.H. Choudhury and Anr.*** : AIR 1985 Gau. 32. The Division Bench held thus, "Thus other contention that the State Government could not appoint an Additional Advocate General is also meritless. The Governor of a State has, under the Constitution, to appoint an Advocate General. That power includes the power to appoint an Additional Advocate General as well. Article 367 of the Constitution provides that unless the context otherwise requires, the General clauses Act, 1897 shall apply for the interpretation of the Constitution. There is nothing repugnant in the subject or context which would exclude the applicability of the General Clauses Act. The provisions of General Clauses Act shall therefore, be pressed into service while interpreting Article 165.
14. In the case of *M.T. Khan (supra)*, the core question involved was the authority of the State to appoint Additional Advocate General

under Article 165 of the Constitution of India. The Hon'ble Supreme Court has observed that when a constitutional post is required to be filled up by a person having the qualification specified therefore, he would alone perform the duties and functions, be it constitutional or statutory, attached to the said office. The Constitution does not envisage that such functions be performed by more than one person. The reason therefore is obvious. If more than one person is appointed to discharge the constitutional functions as also the statutory functions, different Advocate Generals may act differently resulting in a chaos. The Hon'ble Supreme Court has held that the Additional Advocate General so appointed is not a constitutional scheme and does not hold constitutional office.

15. In the present case, the ground of challenge is that the functions of the Advocate General can be performed only by the Advocate General himself and by none else and, therefore, para-3 of the impugned Circular is bad in law.
16. From perusal of para-3 of the impugned circular, it reflects that the State Government has instructed that in absence of learned Advocate General, urgent and routine work at Allahabad shall be performed by Sri Manish Goyal, Additional Advocate General, whereas at Lucknow, the same will be performed by Sri Vinod Kumar Shahi, Additional Advocate General. This para shows that it is only an administrative instructions by way of impugned Circular in order to function the urgent and routine work of the office of Advocate General at Allahabad as well as at Lucknow in absence of the Advocate General. It is not the instruction that the power as enshrined by the Advocate General under the Constitution shall be performed by the Additional Advocate General.
17. From bare reading of the impugned Circular as a whole reveals that in order to place the appropriate facts/pleadings on behalf of

the State in the Court, the State has distributed the work between different State Counsel(s) and para-3 of the impugned Circular only talks about the smooth assistance of the State Counsel in the absence of the Advocate General to the Court. Para-3 of the impugned Circular does not mean that the power of the Advocate General has been assigned to the Additional Advocate Generals for performing his functions as a whole as provided under the Constitution. Thus, para-3 of the impugned Circular is an administrative instructions in order to proper/smooth assistance of the Court on behalf of the State.

18. For the reasons aforesaid, we are not inclined to entertain this writ petition under Article 226 of the Constitution of India.
19. The instant Public Interest Litigation is devoid of merit and is, accordingly, *dismissed*.

(Dinesh Kumar Singh, J.) (Pankaj Kumar Jaiswal, J.)

Order Date :- 31.8.2020

Ajit/-