

ORISSA HIGH COURT: CUTTACK.

W.P.(C) Nos. 17009 and 17110 of 2019

In the matter of applications under Articles 226 & 227 of the Constitution of India.

In W.P.(C) No.17009 of 2019

Banshidhar Baug Petitioner

-Versus-

Orissa High Court, represented though
its Registrar General and others Opp. Parties

For Petitioner : M/s. Bansidhar Baug
(In person)

For Opp. Party Nos.1 and 3 : M/s. Sanjit Mohanty,
Senior Advocate &
I.A. Acharya

For Opp. Party No.5 : M/s. Gouri Mohan Rath,
A.C. Panda,
M. Agarwal, S.S. Padhi,
S.D. Ray, P.P. Behera &
A. Mishra.

For Opp. Party No.6 : M/s. P. Ramakrishna Patro &
A.K. Samal.

For Opp. Party Nos.7, 8 & 9 : M/s. Debasis Nayak,
A. Mishra, M. Agarwal &
P.P. Behera.

In W.P.(C) No.17110 of 2019

Karunakar Jena and others Petitioners

-Versus-

Orissa High Court, represented though
its Registrar General and others Opp. Parties

For Petitioners : M/s. S.S. Rao, B.K. Mohanty
and R.R. Jethi

For Opp. Party No.1 and 3 : M/s. I.A. Acharya

For Opp. Party No.5 : M/s. Gouri Mohan Rath,
A.C. Panda, M.Agarwal,
S.S.Padhi, S.D.Ray,
P.P.Behera & A.Mishra

For Opp. Party No.6 : M/s. P.Ramakrishna Patro
and A.K. Samal

For Opp. Party Nos.7 to 9 : M/s. Debasis Nayak,
A.Mishra, M. Agrawal &
P.P.Behera.

PRESENT :

**THE HONOURABLE SHRI JUSTICE CHITTA RANJAN DASH
A N D
THE HONOURABLE SHRI JUSTICE PRAMATH PATNAIK**

Date of Hearing: 30.03.2021 : Date of Judgment: 10.05.2021

C.R. Dash, J. Both these writ petitions have been filed by four
Advocates. They have put in several years of practice in the

High Court and other Courts. They aspire to be conferred with the designation of “Senior Advocate”. While the process of conferring designation of “Senior Advocate” was on in accordance with Rule-6 of High Court of Orissa (Designation of Senior Advocate) Rules, 2019 (“2019 Rules” for short), the Hon’ble Full Court conferred designation of “Senior Advocate” on five Advocates, who are Opposite Party Nos. 5 to 9.

2. Being aggrieved by such action of the Hon’ble Full Court, both these writ petitions have been filed with the following prayers ;

- (I)** *to quash the Notification No.1378, dated 19.08.2019 vide Annexure-8 declaring Opposite Party Nos.5 to 9 as “Senior Advocates”;*
- (II)** *to quash sub-rule-(9) of Rule-6 of “2019 Rules”;*
- (III)** *to issue direction to the Permanent Committee as well as the Hon’ble Full Court of the High Court to consider the applications of Opposite Party Nos.5 to 9 along with other applicants named in the Notice dated 09.08.2019 vide Annexure-7 for being designated as “Senior Advocates”;*
- (IV)** *In W.P.(C) No.17110 of 2019, one more prayer is added to quash the Notification dated 04.09.2019, which calls applications from*

eligible advocates for being designated as “Senior Advocates”.

- 3.** Brief fact of the case is as follows :-
- (a)** Hon’ble the Supreme Court on 12.10.2017 delivered the Judgment in the case of ***Indira Jaising vs. Supreme Court of India, (2017) 9 SCC 766*** **(Annexure-1)**. The Orissa High Court, in exercise of the power under Section-16(2) read with Section-34 of the Advocates Act, 1961 and the guidelines framed by Hon’ble the Supreme Court in the aforesaid Judgment vide Annexure-1, notified “2019 Rules” on 13.02.2019.

(Annexure – 2)

The Orissa High Court thereafter through the Registrar (Judicial) issued an Advertisement inviting applications from the eligible Advocates to be conferred with the designation of “Senior Advocates”.

(Annexure – 3)

In response to the aforesaid advertisement, 50 applications were received, out of whom, Mr. P.K. Routray, Advocate has expired in the meantime and Mr. S.S. Rao has withdrawn his application.

On scrutiny and perusal of the applications, the Permanent Committee (which includes Hon'ble the Chief Justice and two Senior-most Hon'ble Judges of the Court) placed names of Opposite Party Nos.5 to 9 before the Hon'ble Full Court for consideration of conferring them with designation of "Senior Advocate" by invoking it's suo motu power under sub-rule (9) of Rule-6 of "2019 Rules".

The Orissa High Court thereafter through the Registrar (Judicial) invited suggestions and views on 45 remaining applicants. **(Annexure- 7)**

(b) The Hon'ble Full Court on 17.08.2019, unanimously Resolved to designate Opposite Party Nos. 5 to 9 as "Senior Advocates" in exercise of it's suo motu power under sub-rule (9) of Rule-6 of "2019 Rules".

Notification was issued on 19.08.2019 by the Orissa High Court designating Opposite Party Nos.5 to 9 as "Senior Advocates". **(Annexure- 8)**

After this stage, Mr. P.K. Routray expired and Mr. S.S. Rao withdrew his application. So there remained 43 advocates excluding opposite party Nos.5 to 9 to be

considered for conferring designation of “Senior Advocate” on them.

On 04.09.2019, the Orissa High Court through the Registrar (Judicial) issued a fresh advertisement inviting applications from the eligible Advocates to be designated as “Senior Advocates”. **(Annexure -9)**

(Annexures cited above are as per W.P.(C) No.17009 of 2019).

(C) Impugning conferment of the designation of “Senior Advocate” on Opposite Party Nos.5 to 9 and issuance of Notification dated 04.09.2019 which calls for applications afresh from the eligible Advocates after conferring designation of “Senior Advocates” on Opposite Party Nos.5 to 9, the present writ petitions have been filed with the prayers as delineated in paragraph-2 (supra).

4. Briefly stated, the counter affidavit filed by the Orissa High Court questions the locus standi of the petitioners to file the writ petition and its maintainability.

4.1. It is further asserted that the designation of “Senior Advocate”, being not a “bounty”, “title” or “office” and

the applications of the petitioners for being designated as “Senior Advocate” being still pending as per the procedure enshrined in Rule- 6 of “2019 Rules”, and the lis between the parties not being a Public Interest Litigation (PIL) or an adversarial litigation, the writ petition is not maintainable being premature and the petitioners have no locus standi to call in question the action of the Hon’ble Full Court.

4.2. It is further asserted that the Hon’ble Full Court has rightly declared Opposite Party Nos.5 to 9 as “Senior Advocates”, in exercise of their suo motu power under sub-rule (9) of Rule- 6 of the “2019 Rules” read with Section- 16(2) of the Advocates Act. Hence, the writ petition should be dismissed.

4.3. Except Opposite Party No.6, no other private Opposite Party has filed counter affidavit. The Opposite Party No.6 in his counter affidavit has laid stress on the length of his practice in the High Court and his standing in the Bar.

5. From the rival pleadings filed by the parties, the following points emerge for determination :

(I) Whether the petitioners have locus standi to maintain the writ petition ?

- (II) Whether the Orissa High Court could have framed Rule in the form of “2019 Rules” incorporating sub-rule (9) of Rule- 6, which runs contrary to the guidelines/norms of Hon’ble the Supreme Court for framing Rules as contained in paragraph- 73 of Indira Jaising case ? (Annexure – 1)**
- (III) Whether the direction of Hon’ble the Supreme Court in Indira Jaising case is binding on this Court, in view of Article- 141 of the Constitution of India ?**
- (IV) Whether beginning of sub-rule (9) of Rule-6 with a non-obstante clause takes away the effect of “2019 Rules” from sub-rule (3) to sub-rule (8) of Rule-6 ?**
- (V) Whether the Opposite Party Nos.5 to 9, who had applied as per the “2019 Rules” along with the petitioners and others could have been picked by the Permanent Committee prior to the stage of sub-rule (3) of Rule- 6 of the “2019 Rules” and could their names have been recommended for designation as “Senior Advocates” ?**
- (VI) Whether the Hon’ble Full Court for exercising the power under sub-rule (9) of Rule- 6 could have accepted the recommendation of the Permanent Committee before the stage of sub-rule (3) of Rule-6 to declare Opposite Party Nos.5 to 9 as “Senior Advocates” without forming any independent opinion ?**

6. Broaching the question of “locus standi”, Mr. Sanjit Mohanty, learned Senior Counsel appearing for the Orissa High Court submits that, the designation of

“Senior Advocate” is not an “office” or “post”, in which position only a limited number of persons can be accommodated. Relying on the case of **Indira Jaising (2017) 9 SCC 766** (paragraph- 57), Mr. Mohanty submits that the designation “Senior Advocate” is hardly a “title”, it is a “Distinction”; a “Recognition”. Relying on paragraph- 70 of the said Judgment, Mr. Mohanty submits that, only the most deserving and very best, who would be bestowed with the Honour and Dignity, can be designated as “Senior Advocate”.

6.1. Relying on the case of **National Lawyers’ Campaign for Judicial Transparency and Reforms vs. Union of India, 2019 (5) SCALE: 588** (para- 15), Mr. Mohanty, further submits that, designation as a “Senior Advocate” is neither a “bounty” nor a “right”.

6.2. Mr. Mohanty further goes to submit that the petitioners cannot be termed as being aggrieved or having any locus standi to maintain the writ petition with regard to designation of Opposite Party Nos.5 to 9 as “Senior Advocates” because:

- (I)** the applications of the petitioners for being designated as “Senior Advocates” are still pending.
- (II)** the impugned Notification dated 19.08.2019 designating the Opposite Party Nos.5 to 9 as “Senior Advocates” does not operate as a decision against the petitioners, much less affects them.
- (III)** each applicant has their own interest which cannot be termed as rivals to each other.
- (IV)** there has been no discrimination.
- (V)** there is no inter-se seniority among the “Senior Advocates”.

6.3. Mr. S.P. Mishra, learned Senior Counsel who appears for the Opposite Party Nos.5 to 9 has the same submissions.

7. Mr. Banshidhar Baug, appearing in person, submits that, he has put in 40 years of practice as Advocate of the High Court and different other Courts since 28.02.1981. He had the desire to be considered along with

other Advocates as “Senior Advocate”, but the Permanent Committee as well as the Hon’ble Full Court had arbitrarily, malafidely and illegally designated the Opposite Party Nos.5 to 9 as “Senior Advocates” by adopting pick and choose method and completely discriminated against the petitioner. It is submitted by him that the action of the Permanent Committee and the Hon’ble Full Court is violative of Article-14 of the Constitution of India, “2019 Rules” and Section-16(2) of the Advocates Act. As the petitioner has called in question the method of selection of Opposite Party Nos.5 to 9 as “Senior Advocates”, when his and others’ applications are still pending, he has locus standi to question such method and the writ petition filed by him and other three Advocates are maintainable.

Mr. S.S. Rao, learned counsel, who appears for the petitioners in another writ petition, has also adopted the same stand.

8. Mr. Baug relies on the case of ***Democratic Bar Association, Allahabad and others vs. High Court of Judicature at Allahabad and others***, AIR 2000 Allahabad 300 and the case reported in **(2014) 14 SCALE:**

141 in order to drive to home his points. The case of “Democratic Bar Association”, Allahabad (Supra) was a Public Interest Litigation (PIL). In the said case, locus standi of the petitioner was challenged. The said writ petition was filed challenging the validity of amendment of Designation of Senior Advocates Rules, 1999 and Procedure evolved by such Rules for consideration of Advocates for being designated as “Senior Advocates” under the Advocates Act. The writ petition was filed by the Lawyers practising in the High Court.

8.1. Hon’ble Allahabad High Court held that, the writ petition is maintainable because such Lawyers practising in the High Court cannot be termed as busy bodies and intermeddlers, as they have vital interest in the subject matter of the writ petition, more so, when it was not shown that, the petitioner had filed writ petition for any personal gain or private profit or political motive or any such other oblique consideration.

8.2. In the case reported in **2014 (14) SCALE: 141**, an interim order was passed by the Hon’ble Karnataka High Court at Bangalore holding that, the appellant does not have

locus standi to file writ petition in public interest. Hon'ble the Supreme Court had held that, the petitioner has locus standi, as some issues are to be considered by the High Court in the writ petition regarding the Rules, Regulation, and guideline of conferring the designation of "Senior Advocates". This case also was a PIL filed by an Advocate wherein, main prayer was issuance of a writ of mandamus for framing new norms strictly in consonance with the provisions of Section- 16(2) of the Advocates Act, 1961 in the matter of designation of "Senior Advocates" and a writ of certiorari was also sought for quashing the Notifications dated 30.06.2014 and 14.07.2014 whereby 15 nos. of Advocates had been designated as "Senior Advocates" by the High Court of Karnataka.

9. The decisions relied on by Mr. Baug (Petitioner in W.P.(C) No.17009 of 2019) in the case of "*Democratic Bar Association*", *Allahabad and others* and (2014) 14 SCALE: 141 are not applicable to the facts of the present case, as the writ petitions in both the aforesaid cases were PILs and it is settled law that, no rigid rule of locus standi can be applied to a Public Interest Litigation. Hon'ble the Supreme

Court, in the case of ***Janata Dal vs. Choudhury HS, (1992) 4 SCC 305***, has permitted any person acting bona fide and having sufficient interest in maintaining an action for judicial redress for public injury to put the judicial machinery in motion. However, only a person acting bona fide and having sufficient interest in the proceeding of Public Interest Litigation will alone have a locus standi. A person prompted by personal gain or private profit or political motive or any oblique consideration has no locus standi.

9.1. In the first case relied on by Mr. Baug, an Advocate Body was the petitioner in the writ petition and in the second case, an Advocate was the petitioner in the writ petition and in both the cases, public interest of the Advocates at large were espoused by the petitioners and question of locus standi was decided accordingly. In the present case, however, the petitioners in both the writ petitions are espousing their private cause.

10. The petitioners in both the writ petitions are aggrieved by the fact that opposite party Nos.5 to 9 were picked for designating them as “Senior Advocates”, when the process under Rule-6 of “2019 Rules” was on. The

petitioners might be in know of the rule i.e., “2019 Rules”, but they did not have any expectation that in the midst of the process under Rule-6, the Opposite Party Nos.5 to 9 shall be conferred with the designation of “Senior Advocates” before opening of the process under sub-rule (3) of Rule- 6 and such action shall be taken up by invoking sub-rule (9) of Rule-6 of “2019 Rules”. Such an action was a surprise to them and lacks transparency.

10.1. We thoroughly agree with Mr. Sanjit Mohanty, learned Senior Counsel appearing for the Orissa High Court that whatever he has submitted as enumerated in paragraphs-6, 6.1 and 6.2 of this order are true and the present writ petitions are not usual adversarial litigations, but the petitioners being Advocates and being applicants for being conferred with the designation of “Senior Advocates”, have an existing right to call the rule, i.e. “2019 Rules” in question, though they have applied for being designated as “Senior Advocates”. Designation as a “Senior Advocate” is not a “title” or “office” as ruled by Hon’ble the Supreme Court. But it adds to the prestige of an advocate both in the Bar and society. It gives him an exalted position in the eyes

of the Court before whom he appears. It gives him a self-satisfaction about his achievement in the profession and in life. It adds a distinct feather to his cap already feathered. Even after his death, he is remembered with adulation. The designation may not be a “title” but from the perspective of those on whom the designation of “Senior Advocate” is conferred, it is more than a “title” in the trapping of a “designation”.

10.2. We agree that the petitioners and the Opposite Party Nos.5 to 9 are not rivals so far as their claim is concerned. The petitioners may be conferred with the designation of “Senior Advocates” tomorrow after the process under Rule-6 of “2019 Rules” is over. But being advocates they have a vested and existing right to call in question the rule which creates a separate group within a particular group, more so, when such creation of group by invoking a particular rule is not in consonance with the guidelines of Hon’ble the Supreme Court according to their study and wisdom. The question of validity of sub-rule(9) of Rule-6 of “2019 Rules” being the subject matter of litigation now and the petitioners being alleged to have been discriminated by

that rule, it is not to be seen now as to whether a fundamental right of the petitioners has been violated. Only because the petitioners are applicants for their private cause, the doctrine of a probate and reprobate cannot be applied strictly to the facts of the case especially in view of the nature of the lis. Only and only the validity of sub-rule (9) of Rule-6 of “2019 Rules” has to be examined to find out whether the same is in consonance with the guidelines of Hon’ble the Supreme Court framed in **Indira Jaising** case irrespective of the fact who brought the matter before the Court. In our considered view, therefore, the petitioners have the locus standi to maintain the writ petitions.

11. Mr. S.P. Mishra, learned Senior Counsel appearing for Opposite Party Nos.5 & 7 to 9 raises the question of waiver on the part of the present petitioner on the ground that the petitioners in both these writ petitions are precluded from challenging sub-rule (9) of Rule- 6 of the “2019 Rules”, in view of their participation in the process of selection.

11.1. In this regard, Mr. Mishra, relied on the case of **Madras Institute of Development Studies and another**

vs. K. Sivasubramaniam and others, (2016) 1 SCC 454.

In the aforesaid case, the selection process was challenged by the unsuccessful candidates after participating in the selection process. Relying on a catena of decisions of its own, Hon'ble the Supreme Court held that, such a stand by the petitioners after participating in the selection process acts against them and is hit by waiver and estoppel.

11.2. The case in hand is however different. The petitioners might be knowing the Rule, i.e. "2019 Rules", but they are aggrieved by the action of the High Court in the midst of the selection process under Rule-6 of "2019 Rules" and they have an existing right to challenge sub-rule (9) of Rule-6 as being violative of the guidelines enumerated by Hon'ble the Supreme Court in paragraph- 73 of the **Indira Jaising** case. In view of our discussion supra and the nature of the lis, we do not think strict rule of "Doctrine of waiver" applies to the facts of the case.

12. Out of the points for determination that have been enumerated in paragraph-5 supra, point Nos.2 & 3 are important and basic. Those points are whether sub-rule(9) of Rule-6 of "2019 Rules" is in consonance with the

guidelines/norms framed by Hon'ble the Supreme Court in paragraph- 73 of **Indira Jaising** case and whether those guidelines/norms are binding in view of Article-141 of the Constitution of India.

13. Mr. Baug, appearing in person and Mr. S.S. Rao, learned counsel appearing for the petitioners in another writ petition submit that, sub-rule (9) of Rule-6 giving suo motu power to the Court is contrary to the guidelines framed by Hon'ble the Supreme Court in paragraph-73 of the Judgment in **Indira Jaising** case. They relied on paragraphs- 56, 57, 64, 66, 69, 70, 73 & 74 of the said Judgment to substantiate their contention.

13.1. It is further submitted by Mr. Baug and Mr. Rao that the Judgment of Hon'ble the Supreme Court in the case of **Indira Jaising** being positive and mandatory direction, the same is binding on all Courts, in view of Article- 141 of the Constitution of India. To substantiate this point, they relied on the cases of **State of Himachal Pradesh vs. Paras Ram and others, (2008) 3 SCC 655, Chandramohan Pandurang Kajbaje vs. State of Maharashtra and others, 2008 AIR SCW 619, Kalyani**

Packaging Industry vs. Union of India and another,
(2004) 6 SCC 719 and ***Suganthi Suresh Kumar vs.***
Jagdeeshan, AIR 2002 SC 681.

14. Relying on paragraphs- 58, 62 & 70 of the Judgment in **Indira Jaising** case, Mr. Sanjit Mohanty, learned Senior Counsel appearing for the Orissa High Court submits that sub-rule (9) of Rule-6 of “2019 Rules” is valid and it is not contrary to the guidelines framed by Hon’ble the Supreme Court in the said Judgment, inasmuch as Hon’ble the Supreme Court in paragraph-58 of the **Indira Jaising** case and paragraph-15 of the Judgment of **National Lawyers’ Campaign for Judicial Transparency, 2019 (5) SCALE : 588** has held that, designation of advocates as “Senior Advocate” as provided in Section-16 of the Advocates Act, 1961 is valid and Constitutional.

14.1. It is further submitted by Mr. Mohanty, learned Senior Counsel that, in paragraph- 66 of the **Indira Jaising** case, it is stated that no reasons are recorded either for designation as “Senior Advocate” or rejection. Mr. Mohanty, learned Senior Counsel is vehement on the point that

paragraph- 73 of the said Judgment cannot be read in isolation and it must be read along with paragraphs- 58, 62 & 70. The suo motu power of the High Court has not been taken away in any sense and the suo motu power is a power vested by Section- 16(2) of the Advocates Act, 1961. According to him, the impugned rule is a valid rule and it is not at all contrary to the guidelines framed by Hon'ble the Supreme Court in the said case.

15. Mr. S.P. Mishra, learned Senior Counsel, who appears for Opposite Party Nos.5 & 7 to 9 has the same answer. He also relies on paragraphs- 58, 62 & 70 of the Judgment in **Indira Jaising** case and also relies on the Rule of Punjab & Haryana High Court, which provides for exercise of suo motu power.

16. We read the Judgment in **Indira Jaising** case in its entirety more than once. We found that earlier there were no uniform rules for conferring designation of "Senior Advocates". Different High Courts were following different rules. There was also no proper rule on the subject for Hon'ble the Supreme Court of India. All the aforesaid rules of different High Courts including the rule of this Court

being followed prior to the Judgment in **Indira Jaising** case have been quoted by Hon'ble the Supreme Court in the said Judgment. Hon'ble the Supreme Court, after taking into consideration different rules of different High Courts as well as that of Hon'ble the Supreme Court in paragraph-55 of the Judgment in **Indira Jaising** case, **(2017) 9 SCC 766**, took into consideration the ingredients of Section- 16(2) of the Advocates Act, 1961. In paragraph- 56 towards the end, it is observed by Hon'ble the Supreme Court as thus :-

56. *“xxxxxxxxx So long as the basis of the classification is founded on reasonable parameters which can be introduced by way of uniform guidelines/norms to be laid down by this Court, we do not see how the power of designation conferred by Section 16 of the Act can be said to be constitutionally impermissible.”*

16.1. In paragraph- 57, it is held that, designation of “Senior Advocate” is only a distinction and a recognition. In paragraph- 58, it is held thus :-

58. *“We, therefore, take the view that the designation of “Advocates” as “Senior Advocates” as provided for in Section 16 of the Act would pass the test of constitutionality and the endeavour should be to lay down norms/guidelines/parameters to make the exercise conform to the three requirements of the statute already enumerated hereinabove, i.e., namely, (1) ability of the advocate concerned; (2) his/her standing*

at the Bar; and (3) his/her special knowledge or experience in law.”

16.2. In paragraph- 62 of the said Judgment, it is held

thus :-

62. *“The power of designating any person as a Senior Advocate is always vested in the Full Court either of the Supreme Court or of any High Court. If an extraordinary situation arises requiring the Full Court of a High Court to depart from the usual practice of designating an advocate who has practiced in that High Court or in a court subordinate to that High Court, it may always be open to the Full Court to so act unless **the norms expressly prohibit such a course of action.....**”*

16.3. Paragraph- 66 of the Judgment of the said case

reads as follows :-

66. *“Both Section 16(2) of the Act and Order 4 Rule 2 of the Supreme Court Rules, 2013 are significant in the use of the expression “is of opinion” and “in their opinion”, respectively which controls the power of the Full Court to designate an advocate as a Senior Advocate. It is a subjective exercise that is to be performed by the Full Court inasmuch as a person affected by the refusal of such designation is not heard; nor are reasons recorded either for conferring the designation or refusing the same. But the opinion, though subjective, has to be founded on objective materials. There has to be a full and effective consideration of the criteria prescribed, namely, ability; standing at the Bar, special knowledge or experience in law in the light of materials which necessarily have to be ascertainable and verifiable facts.”*

16.4. Paragraph- 68 of the said Judgment reads as follows :-

68. *“What is merit? Is it the academic qualification or brilliance or is it something more? The matter has been considered earlier by this Court in K.K. Parmar v. High Court of Gujarat. Placing reliance on an earlier view in Guman Singh v. State of Rajasthan it has been held that : (K.K. Parmar case, SCC pp. 801-02, paras 27-28)*

“27. Merit of a candidate is not his academic qualification. It is sum total of various qualities. It reflects the attributes of an employee. It may be his academic qualification. He might have achieved certain distinction in the university. It may involve the character, integrity and devotion to duty of the employee. The manner in which he discharges his final duties would also be a relevant factor. (See Guman Singh v. State of Rajasthan)

28. For the purpose of judging the merit, thus, past performance was a relevant factor. There was no reason as to why the same had been kept out of consideration by the Selection Committee. If a selection is based on the merit and suitability, seniority may have to be given due weightage but it would only be one of the several factors affecting assessment of merit as comparative experience in service should be.”

16.5. Paragraph- 69 of the said Judgment reads as follows :-

69. *“The guidelines governing the exercise of designation by the Supreme Court have already been noticed so also the guidelines in force in the*

various High Courts. Though steps have been taken to bring in some objective parameters, **we are of the view that the same must be more comprehensively considered by this Court to ensure conformity of the actions/ decisions taken under Section 16 of the Act with the requirement of constitutional necessities, particularly, in the domain of a fair, transparent and reasonable exercise of a statutory dispensation on which touchstone alone the exercise of designation under Section 16 of the Act can be justified.** We have also noticed the fact that until the enactment of the Advocates Act, 1961 and the Supreme Court Rules, 1966 the option to be designated as a Senior Advocate or not was left to the advocate concerned, with the Full Court having no role to play in this regard. We have also noticed that in other jurisdictions spread across the Globe, where the practice continues to be in vogue in one form or the other, participation in the decision-making process of other stakeholders has been introduced in the light of experience gained.”

(Emphasis supplied by us)

16.6. Paragraph- 70 of the said Judgment reads as follows :-

70. “We are, therefore, of the view that the framework that we would be introducing by the present order to regulate the system of designation of Senior Advocates must provide representation to the community of advocates though in a limited manner. That apart, we are also of the view that time has come when uniform parameters/ guidelines should govern the exercise of designation of Senior Advocates by all courts of the country including the Supreme Court. **The sole yardstick by which we propose to introduce a set of guidelines to govern the matter is the need for maximum objectivity**

in the process so as to ensure that it is only and only the most deserving and the very best who would be bestowed the honour and dignity. The credentials of every advocate who seeks to be designated as Senior Advocate or whom the Full Court suo motu decides to confer the honour must be subject to an utmost strict process of scrutiny leaving no scope for any doubt or dissatisfaction in the matter.”

(Emphasis supplied by us)

17. We thought it proper to quote the aforesaid paragraphs relied on by learned counsels for the parties not to leave any doubt in their mind and our mind so far as the understanding of the Judgment is concerned. It is settled in law that, a Judgment is never interpreted or in other words, a meaning is never attributed to a Judgment by interpreting it in one's own way. From the reading of the Judgment, we have understood that before framing the guidelines/norms in paragraph- 73, Hon'ble the Supreme Court has taken into consideration at length the power of the Supreme Court and other High Courts under Section- 16 of the Advocates Act and the practice of other Courts across the Globe. They have also taken into consideration in paragraph- 70 **the exercise of suo motu power of the Full Court, but such exercise of power has also been subjected to an utmost strict**

process of scrutiny leaving no scope for any doubt or dissatisfaction in the matter.

18. “2019 Rules” is to be examined in the touchstone of the guideline formulated in paragraph- 73 of the said Judgment. While framing the guideline, Hon’ble the Supreme Court has specifically held that the norms/ guidelines, in existence, shall be suitably modified so as to be in accord with the present. For brevity, we are not quoting here the entire guideline. But we feel it beneficial to say that the power of any addition, deletion from the guidelines formulated in paragraph- 73 in the light of the experience to be gained over a period of time is left open for consideration by Hon’ble the Supreme Court alone at such point of time that the same becomes necessary. It clearly indicates that any modification in the guideline to suit a particular High Court is to be in accord with the guidelines framed in paragraph- 73 and except the Supreme Court, no other High Court has any power to add or delete from the guideline.

19. A thorough reading of the entire Judgment along with the guideline framed in paragraph- 73 of the Judgment

makes it clear that Hon'ble the Supreme Court in paragraph- 73.4 of the Judgment has recognized two sources for drawing advocates for being designated as "Senior Advocate". One is written proposal by the Hon'ble Judges and second source is the application by the advocate concerned. There is no third source of picking an advocate by exercise of suo motu power, though exercise of suo motu power has been discussed in paragraph- 70 of the Judgment. These sources, we think have been inserted in the guidelines after a conscious thought by Hon'ble the Supreme Court. Hon'ble the Supreme Court has not thought it proper to include exercise of suo motu power by either the Supreme Court or other High Courts so far as designation of "Senior Advocate" is concerned.

20. Relevant portion of "2019 Rules" which is impugned here is reproduced below for ready reference :-

"6. Procedure for Designation:-

- (1) All the written proposals or applications for designation of an Advocate as a Senior Advocate shall be submitted to the Secretariat.

Provided further that in case the proposal emanates from a Judge the Secretariat shall request such Advocate to submit Form No.2

duly filled in within such time as directed by the Committee.

- (2) On receipt of an application or proposal for designation of an Advocate as a Senior Advocate, the Secretariat shall compile the relevant data and the information with regard to the reputation, conduct, integrity of the Advocate concerned and on the matters covered by Sl. Nos. 2 & 3 of Appendix-B covering a period of last 5 years.
- (3) The Secretariat will notify the proposed names of the Advocates to be designated as Senior Advocates on the official website of the High Court of Orissa, inviting suggestions and views within such time as may be fixed by the Committee.
- (4) After the material in terms of the above is complied and all such information, as may be specifically required by the Committee to be obtained in respect of any particular candidate, has been obtained and the suggestions and views have been received, the Secretariat shall put up the case before the Committee for scrutiny.
- (5) Upon submission of the case by the Secretariat, the Committee shall examine the same in the light of the material provided and, if it so desires, may also interact with the concerned Advocate(s) and thereafter make its overall assessment on the basis of the point based format provided in **APPENDIX-B** to these Rules.
- (6) After the overall assessment by the Committee, all the names listed before it will be submitted to the Full Court along with its Assessment Report.

- (7) Normally voting by ballot shall not be resorted to unless unavoidable. The motion shall be carried out by consensus, failing which voting by ballot may be resorted to. In the event of voting by ballot, the views of the majority of the Judges present and voting shall constitute the decision of the Full Court. However the Seniormost Judge or Chief Justice as the case may be present in the Full Court shall not cast his vote. In case the Judges present be equally divided, the Chief Justice or in his absence the Seniormost Judge present shall have the casting vote.
- (8) The cases that have not been favorably considered by the Full Court may be reviewed/ reconsidered after the expiry of a period of two years, following the same procedure as prescribed above as if the proposal is being considered afresh.
- (9) Notwithstanding the above noted procedure for designation of an Advocate as Senior Advocate, Full Court on its own can designate an Advocate as Senior Advocate even without any proposal from Hon'ble Judges or application from the Advocate if it is of the opinion that by virtue of his/her ability or standing at the Bar said Advocate deserves such designation."

20.1. A cursory reading of the aforesaid Rule makes it clear that sub-rules- (1) & (2) correspond to paragraph-73.4 of the Judgment in **Indira Jaising** case. Sub-rule (3) corresponds to paragraph- 73.5, sub-rule (4) corresponds to paragraph-73.6, sub-rule (5) corresponds to paragraph-73.7, sub-rule (6) corresponds to paragraph-73.8, sub-rule

(7) corresponds to paragraph-73.9 and sub-rule (8) corresponds to paragraph- 73.10 of the said Judgment. Sub-rule (9) according to Mr. Mohanty, learned Senior Counsel appearing for the Orissa High Court and Mr. S.P. Mishra, learned Senior Counsel appearing for Opposite Party Nos.5 & 7 to 9 corresponds to paragraph-70 of the said Judgment, which speaks of exercise of suo motu power and Section- 16(2) of the Advocates Act, 1961.

21. It is alleged that, after the stage of sub-rule (2), Opposite Party Nos.5 to 9 were picked by the Permanent Committee and the matter was placed before the Hon'ble Full Court for exercise of their suo motu power under sub-rule (9). It is argued that, all the objective data and information with regard to the reputation, conduct and integrity of Opposite Party Nos.5 to 9 were there on record after the stage of sub-rule (2) and the Hon'ble Full Court had the occasion to apply their mind to such data and information with regard to the reputation, conduct and integrity of Opposite Party Nos.5 to 9 at the time of consideration of conferring designation of "Senior Advocate" on them (Opposite Party Nos.5 to 9). Mr. S.P. Mishra,

learned Senior Counsel appearing for Opposite Party Nos.5 & 7 to 9 cites before us the Rule of Punjab & Haryana High Court, which has provision similar to sub-rule (9) of our High Court though couched in different manner. We are, however, not concerned with the Rule of Punjab & Haryana High Court for the present.

22. In sub-rule (9), the word “even” after the word “advocate” and before the word “without” has been used as an adverb. Literally, it is used as an intensive to emphasize the identity and character of something and that something here is without any proposal from the Hon’ble Judges or application from the Advocate. Sub-rule (9), therefore, includes three sources:-

- (1) Proposal from the Hon’ble Judges;
- (2) Application from the Advocate concerned and
- (3) Exercise of suo motu power in respect of an Advocate even without any proposal from the Hon’ble Judges or application from the Advocate concerned, if the Hon’ble Full Court is of the opinion that, by virtue of his/her ability or standing at the Bar, the said Advocate deserves such designation.

23. So far as the third source is concerned, we have discussed in detail that, Hon’ble the Supreme Court in the

Judgment in **Indira Jaising** case has consciously not included the third source in the guideline framed in paragraph-73. In paragraph- 70, Hon'ble the Supreme Court has referred to exercise of suo motu power, but has specifically held thus:-

“xxxxxxxx The credentials of every Advocate who seeks to be designated as Senior Advocate or whom the Full Court suo motu decides to confer the honour must be subject to an utmost strict process of scrutiny leaving no scope for any doubt or dissatisfaction in the matter.”

Aforesaid quotation so couched is so clear in its meaning that, an advocate who seeks to be designated means an advocate who files an application for being designated, stands apart, from him on whom the Hon'ble Full Court suo motu decides to confer the honour. The word “or” in between the words “Advocate” and “whom” has been used as a conjunction, which is a function word to indicate an alternative. Having discussed this suo motu power in paragraph- 70, Hon'ble the Supreme Court in paragraph-73.4 has ipse dixit not stated anything about the pick through suo motu source. Such silence in paragraph-73.4, according to our understanding is a conscious silence.

24. Paragraph- 73 of the said Judgment reads thus:-

73. *“It is in the above backdrop that we proceed to venture into the exercise and lay down the following norms/guidelines which henceforth would govern the exercise of designation of Senior Advocates by the Supreme Court and all High Courts in the Country. The norms/guidelines, in existence, shall be suitably modified so as to be in accord with the present”.*

and Paragraph-74 of the Judgment reads thus:-

74. *“We are not oblivious of the fact that the guidelines enumerated above may not be exhaustive of the matter and may require reconsideration by suitable addition/deletion in the light of the experience to be gained over a period of time. This is a course of action that we leave open for consideration by this Court at such point of time that the same becomes necessary.”*

After reading the entire Judgment and especially paragraphs-73 and 74, we are of the view that sub-rule(9) of Rule- 6 of “2019 Rules” is an addition beyond the scope of the guidelines/norms framed in paragraph-73 of the Judgment in **Indira Jaising** case. Therefore, sub-rule(9) of Rule- 6 of “2019 Rules” is not in consonance with the said Judgment and ultravires of the guidelines/norms in our considered view.

25. In view of Article- 141 of the Constitution of India, the said guideline is binding on all the Courts of the Country including this Hon’ble Court and no citation is necessary to

substantiate this point. It is not out of place to mention here that, in the past, such guidelines were issued in the cases of Vishakha and others, A.R. Antuley, Arnesh Kumar, D.K. Basu, Lalita Kumari and Prabin Singh Saini to cite a few and some have been crystallized into law subsequently.

26. Assuming arguenda sub-rule (9) of Rule- 6 of “2019 Rules” to be valid, it is to be examined whether conferment of designation of “Senior Advocate” on Opposite Party Nos.5 to 9 is above reproach.

Opposite Party Nos. 5 to 9 were applicants for being designated as “Senior Advocates” along with other applicants. They were picked for being conferred with the designation after sub-rule (2) of Rule- 6 stage of “2019 Rules”, leaving other applicants to suffer the grind of the processing mill under the said Rules. There is no material before us to reach a conclusion that applications received from all the applicants were examined in detail or the compilation made by the Secretariat containing relevant data and information with regard to the reputation, conduct and integrity of the advocates concerned of all the advocates was examined in detail to pick Opposite Party Nos.5 to 9 for

conferring them with the designation of “Senior Advocate” in exercise of power under sub-rule (9) of Rule- 6. There is also nothing on record to suggest that the datas and materials were placed before the Full Court to apply it’s mind. Furthermore, Opposite Party Nos.5 to 9 only and none else were adjudged suitable for exercise of power under sub-rule (9) of Rule- 6, when Opposite Party Nos.5 to 9 were also applicants and being the applicants, they were in readiness to suffer the grind of the processing mill entirely under Rule- 6 of “2019 Rules”. Suo motu power is not a power to be exercised ordinarily. It is a power to be exercised sparingly with circumspection in rare cases. We do not find any such rarity in the present case for exercise of power under sub-rule (9) of Rule- 6 of “2019 Rules”. We are, therefore, constrained to hold that the entire process of conferring designation of “Senior Advocate” on Opposite Party Nos.5 to 9 is discriminatory.

27. We have no doubt in our mind that Opposite Party Nos.5 to 9 deserve to be designated as “Senior Advocates” and in the process, they shall be designated as “Senior Advocates”. We are, however, pained by the

argument and submission of Mr. Baug, alleging malafide on the Hon'ble Full Court. He having applied for being designated as "Senior Advocate", he should have the character becoming of a "Senior Advocate". There should be sobriety in his submission. We fail to understand how Mr. Baug forgot that the Hon'ble Full Court with consensus took a decision in plurality and in such a case he could not have attributed malafide to each and every Hon'ble Judge of the Court.

28. After our findings (supra), discussion on other points of determination becomes mere academic in nature. Therefore, for brevity, we desist from such discussion.

29. In W.P.(C) No.17110 of 2019, there is an additional prayer to quash the Notification dated 04.09.2019 calling for applications from the eligible advocates for being designated as "Senior Advocates".

From the facts of the case, it is found that first such notification was issued vide Annexure-3 dated 22.04.2019. In response to the aforesaid advertisement vide Annexure-3, fifty (50) applications were received. The Hon'ble Full Court on 17.08.2019 unanimously resolved to

designate Opposite Party Nos.5 to 9 as “Senior Advocates” in exercise of the power under sub-rule (9) of Rule- 6 of “2019 Rules”. On 19.08.2019, necessary notification was issued designating Opposite Party Nos.5 to 9 as “Senior Advocates”. After the aforesaid exercise was over, the impugned Notification dated 04.09.2019 was issued calling fresh applications from the eligible advocates to be designated as “Senior Advocates”. In our considered view, after the first notification vide Annexure- 3, when the process under Rule- 6 was on, it was irregular on the part of the High Court to issue the Notification dated 04.09.2019. Instead of expanding the ambit of selection process, it put the selection process into more confusion. We are, therefore, of the view that issuance of Notification dated 04.09.2019 is not valid in the eye of law.

30. Before parting with the Judgment, we propose to think aloud on the following aspects:

- (I) He is an Advocate with towering personality. He is suave and gentle. His disposition towards the Court and his fellow counsels is impressive. He is known for his ready wit. Ask him any question on any law, he has an answer with reasonings. His standing in the Bar is remarkable. He is a social factor in the society, he lives. He is humble, dignified, kind and a person with

sobriety. He would however not come to stand in a queue to file an application for being designated as “Senior Advocate”. Such a person being an asset to the profession, suo motu power should be reserved to be exercised for such a person only and such power should be given to the High Courts, as in our understanding, such power has not been given to the High Courts in the guidelines/norms framed in **Indira Jaising** case.

- (II) Designation of “Senior Advocate” is a coveted position from the point of view of the Bar and the society. There should not be crowd in such a coveted position. Every Tom, Dick & Harry should not be brought to this position by whatever means permissible. Certain percentage of the total strength of a particular Bar should only be allowed to enter into this coveted position.

31. Opposite Party Nos.5 to 9 having been graced by the Hon’ble Full Court with the designation of “Senior Advocate”, we do not want to disgrace them at present by withdrawing the designation, as there is no fault on their part in the entire exercise. Tomorrow, the Hon’ble Full Court may rethink after exhausting the process under Rule-6 of “2019 Rules” to designate them again as “Senior Advocates”, as according to our view, they are deserving, but there may be contrary decision also. Though we have declared sub-rule (9) of Rule-6 ultravires, we do not propose to strike down the

Notification No.1378, dated 19.08.2019 for the present. It would only cease to be after a decision is taken by the Hon'ble Full Court on the matter regarding designation of "Senior Advocate" is placed before it after exhausting the entire process under Rule-6 in which process applications of Opposite Party Nos.5 to 9 shall also be taken into consideration.

32. Taking into consideration our discussion (supra), in fine, we hold thus:-

- (I) sub-rule (9) of Rule- 6 of the High Court of Orissa (Designation of Senior Advocate) Rules, 2019 is declared as ultravires of the guidelines/norms framed in paragraph- 73 of **Indira Jaising** case.
- (II) The Notification dated 04.09.2019 calling fresh applications from the eligible Advocates for being designated as "Senior Advocate" is quashed and the applications received in response to the said Notification are not to be taken into consideration.
- (III) The Notification No.1378, dated 19.08.2019 shall have effect till fresh decision by the Hon'ble Full Court is taken regarding designation of "Senior Advocate" on consideration of all 48 applications including that of Opposite Party Nos.5 to 9.

33. The process of designating "Senior Advocates" be completed by end of July, 2021.

34. Both the writ petitions are disposed of accordingly.

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C.R. Dash, J.

I agree.

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P. Patnaik, J.

Orissa High Court, Cuttack.
The 10th May, 2021/S. Mohanty, P.A.

