

In Chamber

Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 569 of 2020

Petitioner :- In Re - Assistance To The Needy Advocates And Registered Advocate Clerks

Respondent :- State of U.P.

Counsel for Petitioner :- Suo Motu

Counsel for Respondent :- C.S.C.

Hon'ble Govind Mathur,Chief Justice

Hon'ble Siddhartha Varma,J.

Heard the learned Advocate-General assisted by Ms. Archana Singh appearing for the U.P. Advocates' Welfare Fund Trustees Committee; Sri Manan Mishra, for the Bar Council of India; Sri Anandi Krishna Narayan for the Bar Council of Uttar Pradesh; Sri H.G.S. Parihar and Sri Sharad Pathak for the Oudh Bar Association and Sri Rakesh Pandey and Sri Amrendra Nath Singh for the Allahabad High Court Bar Association.

On 20.4.2020, certain directions were issued by this Court. Relevant portion of those directions is being reproduced here as under:-

"1.The Trustees Committee constituted under the Uttar Pradesh Advocates Welfare Fund Act, 1974 shall meet at earliest to have a scheme to provide assistance to the needy Advocates, who are deleteriously affected due to COVID-19 lockdown. After having the scheme, the Trustees Committee shall also ensure release of fund to all the court attached recognized Bar Associations in the State of Uttar Pradesh with specific direction to the Associations to further disburse the aid to members of the fund in accordance with the scheme so enacted.

The entire exercise as aforesaid is required to be completed before next date of listing of this petition.

2. The Trustees Committee is further directed to consider and decide all the applications pending before it for disbursement of aid to the widows of Advocates and also to the other claimants. Such applications are required to be considered and decided by the Trustees Committee within a period of one month from today. "

The case was, thereafter, taken up on 5.5.2020, 7.5.2020 and 12.5.2020. Today when the case was taken up, we found that the Trustees Committee under Uttar Pradesh Advocates' Welfare Fund Act, 1974, (hereinafter referred to as ' the Act') had, till date, not been able to come up with any scheme for the purposes of releasing funds to the Court attached recognized Bar Associations in the State of U.P. On 13.4.2020 and 6.5.2020, two affidavits were filed and in both the affidavits, it appears that the Trustees under the Act had tried to convey it to the Court that since there was no money with them, they were not coming up with any fresh scheme. When on 5th of May, 2020, a direction was issued by this Court that the Advocate General, who was also a member of the Trust, had to disclose the total amount of fund which was held by the Trustees Committee then in the affidavit filed thereafter it was stated that the liabilities of the Committee were much more than the funds it had. It was stated therein that there were two types of funds for the expenditures the Committee had to make. Paragraphs 4, 5, 6,

7, 8 and 9 of the affidavit filed by Sri Jai Prakash Singh –II

are being produced here as under:-

(4) That there are two types of fund with the Trustee Committee. **One**, which has been created under Section 4 of the Uttar Pradesh Advocates' Welfare Fund Act. In this fund, at present, Trustee Committee is having about Rs. 69 crores. This fund has been created for providing assistance to the advocates, who become member of the scheme framed by Trustee Committee after depositing the required membership fee. The advocates who continue as a member up to 25/30 years, are paid @ Rs.5,000/- per completed year subject to maximum of Rs. 1,50,000/-.

(5) That in case of death of a member, his nominee or legal heir is paid @ Rs.5,000/- per completed year subject to minimum of Rs. 25,000/- and maximum Rs. 1,50,000/-.

(6) That in this account after paying the liability, till today, the Committee is having only Rs. 69 crore in the Bank. In 2020, the Committee has a liability of Rs. 1,44,85,00,000/- for paying the maturity value to its members and at present it is not in a position to meet out its liability, therefore, the committee has already requested to provide assistance of Rs. 100 crore in this financial for meeting out its statutory liabilities.

(7) That similarly, in between period 2020 to 2044, an amount of Rs. 8,38,53,75,000/- shall be needed for the Scheme, for making payment of the maturity value after completion of 25/30 years.

(8) The **second** scheme is of for giving Rs. 5 lacs on the death of an advocate to his nominee/legal heir, in case, said advocate was registered as an advocate up to age of 40 years and dies before completing 70 years of age. It may be mentioned here that in this Scheme maximum age for getting benefit has been increased from 60 years to 70 years in the year 2019 accepting the long standing demand of advocates and Bar Council. For running this Scheme, the State Government had provided a corpus of Rs. 200 crore and Rs. 10 crore were also provided by the Trustee Committee. At present, the Trustee Committee is having a corpus of Rs. 230 crores for this scheme. Since the maximum age of advocate covered under this scheme has been increased from 60 years to 70 years in 2019, coupled with the fact that the rate of interest has considerably gone down during last few years, it would not be possible to run the said scheme, unless the corpus is increased and, therefore, a demand has already been send to the State Government for increasing the corpus to Rs. 400 crores.

(9) The details of the financial aid given under this Scheme are being given herein below:-

a. Up to 2018-19 out of 1309 applications, payment of Rs. 63,28,00,000/- has been made to 1298 claimants.

b. Similarly, in 2019-20 against 410 claims, amount of Rs. 20,14,00,000/- has been paid to be dependents of the deceased advocates.

However, accounts as were required to be provided were not given.

To understand as to how funds are created under the Act and also to understand as to what are the objects to be fulfilled by the Trust under the Act, it shall be essential to peruse Sections 3, 4, 5, 8 and 9 of the Act and, therefore, the same are being reproduced here as under:-

3. Object of the Fund.- (1) For the following objects of the general public utility, a charitable trust shall be created in respect of a Fund, to be constituted as hereinafter provided and to be called the Uttar Pradesh Advocates' Welfare Fund, namely –

(a) obtaining from the Life Insurance Corporation of India a policy of group life insurance of advocates upto the age of 60 years.

(b) the provision of buildings for halls and libraries, canteens and other facilities for District Bar Associations, or the making of contributions to District Bar Associations for the purposes of making such provision;

[(bb) the organization of Advocates Social Security Fund Scheme hereinafter referred to as the Scheme, for such advocates who have become members of the Scheme;]

(c) the organization of other schemes for the welfare of needy advocates; and

(d) such other objects as would, in the opinion of the Trustees Committee, improve the working conditions and facilities of advocates.

(2) The fund shall consist of –

(a) all moneys transferred to it under Section 4;

(b) all contributions made to it by the State Bar Council;

(c) any voluntary donation or contribution made to the Fund by any advocate, including any sum received from the Life Insurance Corporation of India on the death of an advocate insured under the group life insurance policy where such advocate had nominated the Trustees Committees as the person to whom the money secured by the policy shall be paid in the event of his death.

- (d) any grants made to the fund by the State Government;
- (e) any sum borrowed under Section 5;
- (f) any profit or dividends received from the Life Insurance Corporation of India in respect of the Policy of group life insurance of advocates;
- (g) any interest or dividend or other return of any investment made in respect of any part of the Fund;
- [(h) the sale proceeds of stamps transferred by the State Government in accordance with Section 10];
- (i) all admission fees, and annual subscriptions for membership of the Scheme received in accordance with Section 11 and interest, if any, thereon.

(3) The Fund shall vest in and be held and administered by a Trustees Committee to be name the Uttar Pradesh Advocates' Welfare Fund Trustees Committee, of which the following shall be the members, namely –

- (a) the Advocate-General of Uttar Pradesh, ex-officio, who shall be chairman;
- (b) the Chairman, State Bar Council, ex-officio, or where that office is for the time being held by the Advocate-General, an advocate nominated by the State Bar Council;
- (c) the Secretary to the State Government in the Judicial Department, ex-officio, who shall be member-Secretary.

(4) A member nominated under Cl. (b) of sub-section (3) shall hold office for a term of three years, but he may at any time by writing under his hand addressed to the Chairman, resign his membership.

(5) The Trustees Committee shall be a body corporate with the name aforesaid, having perpetual succession and a common seal, with power to acquire and hold property, and may sue and sued by that name.

(6) No act or proceeding of the Trustees Committee shall be questioned or deemed to be invalid by reason merely of any vacancy in or any defect in the constitution thereof.

4. Transfer of certain moneys to Fund. – As soon as may be after the commencement of this Act, an amount equivalent to the sums received by the State Bar Council on account of the deposits of stamp duty on certificates of enrolment paid by advocates, together with interest actually earned thereon, shall be paid by it to the credit of the Fund, and such credit to the Fund shall discharge the State Bar Council of the liability in respect thereof to the State Government.

5. Financial provisions. – (1) The Trustees Committee may, from time to time, borrow any sum required for the purposes of this Act.

(2) The moneys in the Fund may be deposited in any scheduled bank or invested by the Trustees Committee in loans and advances to any corporation owned or controlled by the State Government, or in such other manner as the State Government may from time to time direct.

(3) The Fund shall be deemed to be a local fund and be audited by the Examiner, Local Fund Accounts, Uttar Pradesh.

8. Contribution by State Bar Council.- The State Bar Council shall contribute to the Fund rupees one lakh on the date of commencement of the Uttar Pradesh Advocates' Welfare Fund (Amendment) Act, 1988 and thereafter annually, an amount equal to twenty-five per cent of the fees realized by it on account of enrolment of advocates during the year.

9. Welfare stamp on Vakalatnama. **-(1)** Every member of the Scheme shall affix on the Vakalatnama accepted by him a welfare stamp of the value of [ten rupees] in the case of Vakalatnama filed in High Court or a Tribunal or any other Authority or person and two rupees in any other case and no Court, Tribunal, Authority or person shall receive any Vakalatnama in favour of such member unless it is so stamped in addition to any stamp required under any law for the time being in force.

(2) The value of the welfare stamp shall neither be taxable cost in the suit or proceeding nor be collected in any event from a party to such suit or proceedings.

(3) Any contravention of the provisions of sub-section (2) by any member shall disentitle him to the benefits of the Scheme and shall be deemed to be a misconduct and that Trustees Committee shall report the matter to the State Bar Council for appropriate action.

(4) Every welfare stamp affixed on a Vakalatnama under sub-Section (1) shall be cancelled in the manner provided in Section 30 of the Court-fees Act, 1870.

[(5) Where in any case the Welfare stamp referred to in sub-section (1) is not affixed on the Vakalatnama or is not filed by any Advocate the Court shall not permit such Advocate for further proceedings in that case.]

The funds which make the corpus for the Trust can be found from the provisions of Section 3(2) of the Act and the object for which the fund is created can be found from Section 3(1) of the Act. The welfare of needy advocates has to be looked into by the Trustees of the Fund and as per Chapter VI of the Rules of the Bar Council of India Rules,

the welfare of needy advocates had also to be looked into at the time of **natural calamities**. The explanation that “need of lawyers” would also mean the need which arises during **natural calamities** has been recognized by the Rules framed under the Bar Council of India. Under Rule 44B of the Chapter VI of the Bar Council of India Rules, providing succour at the time of natural calamity has been provided. The Rule 44B as also the Scheme framed thereunder by the Bar Council of India is being reproduced here as under:-

44B. The Bar Council of India shall utilise the funds received under rule 41(2) in accordance with the schemes which may be framed from time to time.

SCHEME FOR FINANCIAL ASSISTANCE TO STATE BAR COUNCILS AND INDIVIDUALS UNDER RULE 44B OF THE BAR COUNCIL OF INDIA RULES¹

1. This Scheme shall be known as the Scheme for Financial Assistance to the State Bar Councils under rule 44B of the Bar Council of India Rules.
2. The Scheme shall come into force immediately.
3. These schemes shall be applicable to only such State Bar Councils which have remitted the sum in accordance with the rule 41(2) of the Bar Council of India.
4. That on receiving information from the Chairman of the State Bar Council or Member, Bar Council of India from that State, the Chairman, Bar Council of India on being satisfied by such report may immediately sanction a reasonable amount not exceeding Rs. 50,000/- in an individual case and Rs. 1,00,000/- in case of some calamity involving more than one advocate and shall report to the Advocates Welfare Committee of the Bar Council of India. The financial assistance to the State Bar Councils will be available in any of the following cases:-
 - (a) The advocate or advocates have suffered seriously on account of some **natural calamity**, or;
 - (b) the advocate or advocates have died on unnatural death, due to an accident or **natural calamity** or any other cause of like nature, or;
 - (c) the advocate or advocates have suffered or is suffering from such serious disease or illness which is likely to cause death if no proper treatment is given and the advocate requires financial assistance without which he would not be able to get proper treatment and has no personal assets

¹ Came into force w.e.f. July 1998 vide Resolution No. 64/1998

except a residential house to meet such expenditures, or;
 (d) the advocate or advocates become physically disabled or incapacitated to continue his profession on account of **natural calamity** or accident or any other cause of like nature.]

5. That the amount sanctioned under rule 4 shall be placed at the disposal of the Advocates Welfare Committee of the Bar Council of India for the State and the said State Committee shall maintain separate account and send the same to the Bar Council of India within three months from the date of the receipt thereof.

6. That the Advocates Welfare Committee of the Bar Council of India on receiving such applications duly recommended by the State Bar Councils, may sanction a sum provided in the different schemes prepared by the Bar Council of India.

A perusal of the objects of the U.P. Advocates' Welfare Fund Act, 1974, makes it clear that schemes had to be framed for the welfare of needy advocates under Section 3(1)(c) of it. When Rules of the Bar Council of India provide for help to an advocate at the time of a natural calamity then a scheme ought to have been formulated by the Trustees of the Act under Section 3(1)(c) of the 1974 Act for providing succour to needy advocates in the present times when Courts have been indefinitely made non-functional because of the spread of Covind-19 virus. Further, if we peruse the provisions of Section 3(2)(c) of the Act, we find that the money which is required to be given to the dependents of the deceased lawyers comes from the Insurance Policies which must be providing substantial sums for the dependents of the deceased. The funds which come to the Trust under Sections 4 and 5, are thus sufficient for providing relief under Section 3(1)(c) for bringing

succour to lawyers in the present times. Section 5 of the Act provides that the Trust could also borrow money for the welfare of needy advocates. Under Section 13, some amount might be payable on the cessation of a membership but for any other payment, funds would be available from the payments made by the Life Insurance Corporation. Therefore when payments to dependents have been catered for all other funds available under Section 4 of the Act can be used for providing help to lawyers in the present times.

Be that as it may, under Section 5 the Trustees Committee may use its powers in the present times to borrow funds and, therefore, under no circumstances can U.P. Advocates' Welfare Fund Trustees Committee come up with a case that it is lacking funds. It can also not transfer its burden of providing help to the State Bar Council as under Section 4 of the Act virtually all funds of the State Bar Council stand transferred to it.

Under such circumstances, we direct that advocates who require funds in the present times when the Courts have been made non-functional due to the Covid-19 virus, which is definitely a natural calamity, the Trustees of the Fund under the 1974 Act may formulate a scheme for bringing succour to its members forthwith. This exercise may be

completed within a period of one week.

We further provide that if the Trust applies for loans it may be extended the same. The guarantee may be provided by the Government.

List this case on 26.5.2020.

Order Date :- 14.5.2020

PK

(Siddhartha Varma,J.) (Govind Mathur,C.J.)