

Court No. - 2

Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 527 of 2022

Petitioner :- Rama Shankar Tiwari Alias Rama Shankar And Others

Respondent :- State Of U.P. Thru. Prin. Secy. Law Justice Civil Secret. Lucknow And Others

Counsel for Petitioner :- Alok Kirti Mishra, Dinesh Kumar Tripathi

Counsel for Respondent :- C.S.C.

Hon'ble Devendra Kumar Upadhyaya, J.

Hon'ble Shree Prakash Singh, J.

As far back as in the year 1991, Hon'ble Supreme Court in case of **Kumari Shrilekha Vidyarthi and other Vs. State of U.P. and others, reported in (1991) 1 SCC 212** has noted, *inter alia*, that it is always the prerogative of a litigant to choose his client including the Government, however, the matter of engagement of counsels/advocates by the State Governments or State instrumentalities does involve public law element for the reason that ultimately the remuneration paid to the Government Law Officers is charged on the State exchequer.

This Public Interest Litigation filed by three practicing lawyers of this Court engages our attention to the system prevalent in the State of Uttar Pradesh relating to engagement of Advocates by the State Government as also by other State undertakings/instrumentalities.

We have heard Shri Dinesh Kumar Tripathi and Shri Alok Kriti Misra, learned counsel representing the petitioners. Shri Rama Shankar Tiwari @ Rama Shankar, the petitioner No.1 in person has also been heard.

Shri Abhinav N. Trivedi, learned Chief Standing Counsel representing the State-respondents has, at the outset, raised a

preliminary objection regarding maintainability of the petition stating that the instant Public Interest Litigation at the instance of the petitioners who are practicing lawyers, is not maintainable for the reason that there is nothing on record which can suggest that they have made any contribution towards welfare of the lawyers in general. It has also been submitted that one of the requirements in terms of Chapter XXII Rule 1(3-A) of the High Court Rules for filing the Public Interest Litigation (which was inserted in the Rules of the Court in compliance of the judgment rendered by Hon'ble Supreme Court in the case of **State of Uttarakhand vs. Balwant Singh Chauhan, reported in (2010) 3 SCC 402**) is that a declaration has to be made by the person filing the Public Interest Litigation that there is no authoritative pronouncement by the Supreme Court or High Court on the question raised and since there are various pronouncements not only by Hon'ble Supreme Court but also by this Court on the legal issue involved in this petition, hence for want of fulfillment of requirement in this regard as per Rule 1(3-A) of Chapter XXII of the Rules, the petition is not maintainable.

The petitioners are practicing lawyers of this Court having to their credit considerable length of practice. All the petitioners are members of Oudh Bar Association and are also enrolled as AORs with the High Court. Their concern about the transparency, fairness and objectivity in the matter of engagement of State lawyers cannot be doubted. Accordingly, the first submission regarding maintainability of the petition raised by the learned Chief Standing Counsel merits rejection which is hereby rejected.

So far as the other submission made by Sri Trivedi regarding declaration that there is no authoritative pronouncement by Hon'ble Supreme Court and by this Court on the issue

engaging attention of this Court in this case, is concerned, we may only observe that the authoritative pronouncement by Hon'ble Supreme Court and even by this Court may have been rendered in past on the issue as to how and in what manner engagement of lawyers by the State Government may be done, however, as to whether such pronouncements faithfully and in all earnest are being followed and honoured and respected is the question which requires our consideration in this case.

Accordingly, we reject the second submission as well raised by the learned Chief Standing Counsel regarding maintainability of the petition.

Learned counsel for the petitioners have stated that so far as the prayer relating to quashing of the order of engagement of the Government Advocates (which expression shall hereinafter cover the Advocates engagement by the State, both on Civil and Criminal side) is concerned, at the moment concern of the petitioners is more towards ensuring the process of engagement of the Government Advocates to be more transparent, fair and objective and accordingly the prayer no.1 may be permitted to be not pressed.

We order accordingly.

However, it has been submitted by the learned counsel for the petitioners that despite giving undertaking repeatedly before this Court by the State Government to follow and implement the dictum of Hon'ble Supreme Court in the case of **State of Punjab and another vs. Brijeshwar Singh Chahal and another reported in (2016) 6 SCC 1**, the State Government has acted in complete derogation of the directions contained in the said judgment. Such an act, as submitted by the learned counsel for the petitioners, of the State Government is not only unjust but in

fact amounts to defiance of the directions issued by Hon'ble Supreme Court.

For stressing the aforesaid submissions, reliance has been placed by the learned counsel for the petitioners on the judgment and order dated 13.12.2016, passed by this Court in **P.I.L No.58079 of 2016, Ahmad Husain Khan vs. State of U.P. and others**. Reliance has also been placed on two other orders dated 20.07.2017 and 21.07.2017, passed by a coordinate Bench of this Court in **P.I.L Civil No.16009 of 2017, Mahendra Singh Pawar vs. State of U.P. and others**.

Urging the aforesaid grounds, learned counsel for the petitioners have also placed reliance on a recent undertaking given on behalf of State of Uttar Pradesh which is recorded by this Court in the order dated 07.07.2022, passed in **Special Appeal (D) No.220 of 2022**.

When we peruse the aforesaid judgments and orders as relied upon by the learned counsel for the petitioners, what we find is that consecutively undertakings have been extended to this Court by the State Government to follow the guidelines laid down in the case of **Brijeshwar Singh Chahal (supra)**. It may be noticed, at this juncture itself that the case of **Brijeshwar Singh Chahal (supra)** was decided in the backdrop of the issues related to engagement of the Government Advocates by the State of Punjab and State of Haryana. After framing certain issues, Hon'ble Supreme Court proceeded to give directions which are contained in paragraph 51 of the report.

In paragraph 51.6 of the said judgment, it has been clarified by the Hon'ble Supreme Court that though the Court was primarily concerned with the procedure regarding selection and appointment of Law Officers in the State of Punjab and State of

Haryana and though the Court had confined the directions to these two States only, yet Hon'ble Supreme Court in the same breath has observed that, “other States would do well to reform their system of selection and appointment to make the same more transparent, fair and objective”. Hon'ble Supreme Court further observed that “if necessary, by amending the relevant LR Manual/Rules and Regulations on the subject”. Paragraph 51.6 of the judgment in the case of **Brijeshwar Singh Chahal (supra)** is extracted herein below :

“51.6. We further clarify that although we are primarily concerned with the procedure regarding selection and appointment of Law Officers in the States of Punjab and Haryana and although we have confined our directions to the said two States only yet other States would do well to reform their system of selection and appointment to make the same more transparent, fair and objective, if necessary, by amending the relevant LR Manuals/Rules and Regulations on the subject.”

The observations made and directions given by Hon'ble Supreme Court in the case of **Brijeshwar Singh Chahal (supra)** has to be given purposeful meaning and effect by all concerned. In the said case, their Lordships of Hon'ble Apex Court have clearly directed that the States other than the State of Punjab and State of Haryana, shall also take appropriate steps to reform their system of selection and appointment of Government Advocates and if for the said purpose any amendment in the LR Manual or Rules or Regulations on the subject are required, the same shall also be done.

It is to be noticed and we wish to remind the State Government that in terms of the provisions of Article 141 of the Constitution of India, Law declared by Hon'ble Supreme Court is binding on all Courts within the territory of India. However, we also notice Article 144 of the Constitution of India which clearly

mandates that all authorities, Civil and Judicial, in the territory of India shall act in aid of Hon'ble Supreme Court. We, thus, are of the opinion that if any direction has been issued or any observation has been made by Hon'ble Supreme Court on a particular subject with which any Civil or Judicial authority within the territory of India is concerned, it is mandatory for such Civil or Judicial authority to act in aid of Hon'ble Supreme Court, that is to say that they are duty bound to act in conformity with the observations and directions issued by Hon'ble Supreme Court. (Emphasis supplied)

The directions by Hon'ble Supreme Court for reforming the system of selection and appointment of Government Advocates with a view to make the same more transparent, fair and objective, was issued way back on 30.03.2016 in the case of **Brijeshwar Singh Chahal (supra)**. More than six and half years have elapsed since then, however, no concrete steps appear to be in sight which the State Government might have taken to reform the system of selection and appointment of the State Law Officers.

At this juncture, Sri Abhinav N. Trivedi, learned Chief Standing Counsel has stated that for making recommendations for appointment as State Law Officers, the State Government constituted a Committee comprising of three high level officers of the State Government and appointments by means of the order dated 01.08.2022 were made in view of the recommendation made by the said Committee.

Appointing a Committee as one time measure for making recommendation for selection and appointment of the State Law Officers does not, in our considered opinion, appear to constitute any meaningful and concrete step to comply with the judgment

and order passed by Hon'ble Supreme Court in the case of **Brijeshwar Singh Chahal (supra)**. Hon'ble Supreme Court has clearly directed for taking concrete steps for reforming the system so that it is made more transparent, fair and objective.

We understand that for regulating the appointment of Government Law Officers in the State of U.P., LR Manual is in place. However, as observed by Hon'ble Supreme Court, since there exists a need to make the system more transparent, fair and objective, the State Government, in compliance of the judgment and order of Hon'ble Supreme Court in the case of **Brijeshwar Singh Chahal (supra)**, was/is expected to evolve a system/policy so that it is in tune with the observations made by Hon'ble Supreme Court in the said case.

We, thus, call upon the State Government to file counter affidavit/affidavit to be sworn in by none other than the Principal Secretary, Law/ Legal Remembrancer himself stating therein as to what steps are being taken/proposed to be taken for ensuring that observations and directions of Hon'ble Supreme Court in the case of **Brijeshwar Singh Chahal (supra)** are implemented in their true spirit. The affidavit to be submitted under this order shall give a complete scheme of selection and appointment of Government Advocates which shall ensure the process to be more transparent, fair and objective.

Transparency, fairness and objectivity are the hallmarks of the present day administration and our Society has to take strides to ensure that administration is more transparent and that it functions more objectively. Accordingly, we require that affidavit to be filed under this order shall touch upon all the aspects of the selection and appointment of the Government Advocates which may include assessment of need, eligibility, equal opportunity,

process of selection and all other related and auxiliary aspects.

The Court shares the concern of the petitioners that entire process should be more transparent and objective. While filing the affidavit, the endeavour of the State Government, in our opinion, should be to ensure that the process to be evolved henceforth does not lack transparency and objectivity. The said affidavit shall be filed within a period of six weeks after serving a copy thereof upon the learned counsel for the petitioners who shall file rejoinder affidavit by the next date of listing.

List this case on 17.10.2022.

At this juncture, learned counsel for the petitioners pray that the respondent No.4 may be permitted to be deleted from the array of respondents.

The prayer made is granted.

Let respondent No.4 be deleted from the array of respondents and respondent No.5 be renumbered as respondent No.4. The necessary amendment shall be incorporated by the learned counsel for the petitioners during course of the day.

Order Date :- 24.8.2022

Sanjay