IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :- **Hon'ble Mr. Justice I. P. Mukerji**
Hon'ble Justice Amrita Sinha

W.P. No. 18345 (W) of 2018

Debasish Roy.

Vs.

The High Court at Calcutta & Anr.

For the Petitioner (In person)	**:-**	**Mr. Debasish Roy.**
For Court Administration	**:-**	**Mr. Joydeep Kar, Sr. Adv.** **Mr. Siddhartha Banerjee** **Mr. Pijush Biswas** **Mr. Abhisek Baran Das, Adv.**
Judgment On	**: -**	**31.01.2019**

I.P. MUKERJI, J.:-

This public interest litigation was assigned to us by the Hon'ble the Chief Justice for consideration and disposal.

It relates to the process of appointment of Senior Advocates by this Court.

This class of advocates is referred to in Section 16 of the Advocates Act, 1961.

It is in the following terms:

"16. Senior and other advocates.—

(1) There shall be two classes of advocates, namely, senior advocates and other advocates. (2) An advocate may, with his consent, be designated as senior advocate if the Supreme Court or a High Court is of opinion that by virtue of his ability 1 [standing at the Bar or special knowledge or experience in law]

he is deserving of such distinction. (3) Senior advocates shall, in the matter of their practice, be subject to such restrictions as the Bar Council of India may, in the interest of the legal profession, prescribe. (4) An advocate of the Supreme Court who was a senior advocate of that Court immediately before the appointed day shall, for the purposes of this section, be deemed to be a senior advocate: 2 [Provided that where any such senior advocate makes an application before the 31st December, 1965 to the Bar Council maintaining the roll in which his name has been entered that he does not desire to continue as a senior advocate, the Bar Council may grant the application and the roll shall be altered accordingly.]"

An advocate may be designated as a senior advocate, subject to fulfillment of certain eligibility criteria like "standing at the bar" or "special knowledge" or "experience in law". This designation may be made by the Supreme Court or a High Court on formation of an opinion that the above qualities do exist in the advocate.

The Supreme Court pronounced a judgment on 12th October, 2017 **MS. Indira Jaising Vs. Supreme Court of India**, reported in **2017 9 SCC 766**, inter alia, prescribing guidelines for designation of senior advocates.

This is what the Supreme Court said:

> *"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 a 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."*

Following these directions on 3rd July, 2018, our Court through its Registrar General framed guidelines by notification. The contents of this notification are very important. We will discuss them later on in this judgment. On 25th July, 2018 this Court through the Registrar General, published another notification inviting application by learned Advocates by 31st July, 2018 along with affidavit information/data pertaining to paragraphs 14D, E and F of the guidelines.

Sometime in or about September, 2018 one Debasish Roy an advocate of this Court filed this public interest litigation challenging these two notifications issued by the Registrar General on many grounds.

Mr. Roy appearing in person, argued that the guidelines framed by our court were in conflict with the said Act and the said judgment of the Supreme Court. While prescribing the eligibility criteria guideline 11 states that the

candidate must have practised in the high court regularly. According to him Section 16 of the Act says nothing about the grade of court where an advocate should be practising to be eligible for being considered as a senior advocate. The said section only says that advocates may be designated as senior advocates. Therefore this qualification engrafted into the guidelines, was contrary to the Act, the said judgment and would unnecessarily debar or dissuade advocates in the lower judiciary from applying for this purpose.

Mr. Kar was quick to contradict this assertion. He said that no confusion was created in the mind of anybody. In fact members of the bar of the subordinate courts have applied for being appointed senior advocates.

In our view Section 16(2) of the Act does not qualify the term “advocate”. The section only provides that there shall be a class of advocates called senior advocates. Any advocate may be appointed as a senior advocate. It does not say senior advocate of the Supreme Court or senior advocate of the high court. This means that an advocate designated as a senior advocate by the Supreme Court can practise as a senior advocate in the Supreme Court and the High Courts and as a matter of fact in all courts in India. Such is the case with a senior advocate designated by the High Court. Such designation shall be made by the Supreme Court or the High court. The Supreme Court or the high court has to form an opinion that the ability of the advocate, his standing at the bar or special knowledge or experience in law is such that he is entitled to such designation. The Act does not prescribe any place of practice or grade of court where an advocate should be practising to be eligible for consideration.

But if you look at the later part of Sub-section (2) you will notice as we have observed above that the designating court has to form an opinion. The opinion necessarily is subjective as conceived by the Act. The court is to form an opinion itself and not go by any certification made by anybody else. Therefore, in most cases an advocate must actually be seen to be performing in the Supreme Court or the high court by its judges. But it may well be the case that in a short period of time, doing a few big cases an advocate of a lower court makes a healthy impression in the High Court. Thereafter, he may not appear frequently. Still he may be designated as a senior advocate. Or the Supreme Court or the high court may be so impressed with the cross examination skill of a lower court advocate or his arguments and his knowledge of law evident from it that he is designated a senior advocate, without his having a regular practice in either of the Courts.

I no doubt realize that the said guidelines have been made taking into consideration the ground reality that an advocate has to be physically observed to be designated a senior advocate but nevertheless in view of my analysis above the condition stipulating regular practice in the high court for being considered for designation as a senior advocate should be omitted from the guidelines.

The next substantial point made by Mr. Roy was that the stipulation in paragraph 20 of the guidelines that in a deserving case the Permanent Committee may relax the benchmark of 60 marks up to a maximum of 10 marks cannot claim any justification from the Advocate's Act, 1961 or from the Indira Jaising case. What is to be considered as a deserving case has not

been specified. As far as the points or marks for assessment are concerned, our guidelines are identical to the scheme pronounced by the Supreme Court in paragraph 73.7 of the said judgment. But there is neither any stipulation in the judgment that 60 marks or points have to be obtained to be designated a Senior Advocate nor any provision for relaxation of marks or points. In fact, Paragraph 73.7 of the said judgment lays down the following:-

> ***73.7.*** *The Permanent Committee will examine each case in the light of the data provided by the Secretariat of the Permanent Committee; interview the advocate concerned; and make its overall assessment on the basis of a point based format indicated below:*

Sl. No.	Matter	Points
1.	Number of years of practice of the applicant advocate from the date of enrolment. [10 points for 10-20 years of practise; 20 points for practice beyond 20 years]	20 points
2.	Judgments (reported and unreported) which indicate the legal formulations advanced by the advocate concerned in the course of the proceedings of the case; pro bono work done by the advocate concerned; domain expertise	40 points

	of the applicant advocate in various branches of law, such as Constitutional law, Inter-State Water Disputes, Criminal law, Arbitration law, Corporate law, Family law, Human Rights, Public Interest Litigation, International law, law relating to women, etc.	
3.	Publications by the applicant advocate	15 points
4.	Test of personality and suitability on the basis of interview/interaction	25 points

By prescribing qualifying marks you are adding a condition which is non-existent in the Supreme Court judgment. Secondly, you have already chosen a standard or benchmark below which you cannot descend even in deserving cases. Now, this kind of a subjective standard is not prescribed by the said Act. The only standard prescribed in the Act is that in the opinion of the Supreme Court or the high court the advocate has to have ability, standing at the Bar or special knowledge, experience etc. The type or level of such ability or standing has not been set. The provision for making exception by relaxation of benchmark in some deserving cases is ultravires the Act. In our opinion the stipulation of 60 marks appears to be invalid. But the point regarding 60 marks' benchmark was neither raised in the pleadings nor argued. Hence, our

observation regarding the same is “obiter dicta”. We do not make any order pertaining to it.

The next point taken by Mr. Roy was that the guidelines according to the said case of Indira Jaising had to be framed by the Permanent Committee. In this case, the guidelines were made by the High Court which were followed by the Permanent Committee. The Indira Jaising judgment was pronounced on 12th October, 2017. The guidelines of this Court in the form of a notification were made on 3rd July, 2018 and published in the Kolkata Gazette on 12th July, 2018. The recital to the notification clearly stated that those guidelines were framed by this Court in exercise of powers conferred upon the High Court under Section 16(2) of the Advocates Act, 1961 and the said judgment dated 12th October,. 2017. On 25th July, 2018 the Registrar General of this Court published a notification inviting applications from those advocates regularly practising in the High Court. Those applications were to be submitted by 31st July, 2018.

In our opinion, this point is of no substance. At the end of the day it does not matter whether the guidelines have been made by the Court or the Permanent Committee, provided the same are in line with the guidelines prescribed in the above Supreme Court case.

A point of some substance was raised by the petitioner while referring to paragraph 14 of our guidelines which inter alia, specify the sources from which the Secretariat would collect information with regard to the candidates. For pro bono work Legal Services Authority was described as the source of information or data. [Pargraph 14(c) of the guidelines]. The petitioner said that

while identifying the Legal Services Authority, the High Court had expressed its opinion that pro bono work was only done under this authority. He argued that the panel counsel for the State Legal Services Authority were paid fees and did not do pro bono work. Mr. Kar replied that the Judges who comprise the Lok Adalat did not charge any fees. He also said that the State Legal Services Authority was one instance cited in the guidelines. This did not exclude other pro bono work.

We are unable to appreciate this submission of Mr. Kar. When the guidelines specify that the Legal Services Authority is the provider of data for pro bono work, the Secretariat will only look towards it to collect or verify information in relation to pro bono work done by a candidate. This provision was unnecessary. We find that in Sl. No. 8 of the proforma application there is reference to "details of the pro bono work done". We think that once these details are furnished they are either to be accepted or if the Secretariat is directed by the Permanent Committee to verify or collect information, it may do so, working upon the said details furnished. It should be left with the Secretariat to make its own discreet enquiry.

There is another important contention that we have to take notice of in the said application form appended to the guidelines. Sl. No. 13 of the form is about professional income according to the tax returns of the applicant for the past five years.

Now, in paragraph 71 of the said judgment, the following dictum of the Supreme Court is laid down:

> *"A word with regard to minimum age and income as conditions of eligibility would be appropriate at this stage. From the narration contained hereinabove with regard to the norms and guidelines prevailing in different High Courts, it is evident that varying periods of practice and different slabs of income have been, inter alia, prescribed as minimum conditions of eligibility for consideration for designation as a Senior Advocate. If merit and ability is to be the determining factor, in addition to standing in the Bar and expertise in any specialized field of law, we do not see why we should insist on any minimum income as a condition of eligibility. The income generated by a lawyer would depend on the field of his practice and it is possible that a lawyer doing pro bono work or who specializes in a particular field may generate a lower return of income than his counterpart who may be working in another field of law. Insistence on any particular income, therefore, may be a self-defeating exercise."*

Professional income for the reasons given in that judgment is not a factor to be considered at all. In our opinion, the requirement of providing professional income for the last five years in the application form is not compatible with the judgment. Mr. Kar assures us that the income criterion was not taken into account in assessing the suitability of candidates. Moreover, it tends to have a prejudicial effect on the minds of the committee. Therefore, that entry from the guidelines is incompatible with the said Act and judgment and is to be removed.

Now, there is one minor point raised by the petitioner. He says that the stakeholders should not be classified and that invitation to objections to the appointment of Senior Advocates should be extended to the world at large. This is an absolutely worthless point. Categorization of stakeholders was proper. There is a purpose in designating a particular class of stakeholders. We find in paragraph 15 of the guidelines that the views of those who have a proper knowledge of our legal system and the functioning of courts, judges, lawyers etc. are solicited for consideration. In our opinion, that is better than turning it into a free for all. Furthermore, a lot of discretionary power has been conferred on the Permanent Committee by consulting whomsoever it thinks fit and proper, as rightly pointed out by Mr. Kar. Therefore this point of Mr. Roy is rejected.

We declare that the following provisions in the said guidelines are contrary to Section 16(2) of the Advocate's Act, 1961 and the dictum of the Supreme Court in the Indira Jaising case:

(a) The phrase "regularly practising in the High Court" in Paragraph 11 of the guidelines.

(b) Sub-para (c) of Paragraph 14 "Legal Services Authority for pro bono work."

(c) The rest of paragraph 20 of the said guidelines after the first sentence.

(d) Entry No. 13 "professional income particulars as reflected in the tax returns filed in the past five years" in the proforma application annexed to the said guidelines.

First of all, apart from what has been pointed out above, there is no incompatibility between these guidelines and the dictum of the Supreme Court in the Indira Jaising case. Whatever incompatibility is there is sought to be identified and removed by this judgment.

The Court while interpreting some Act or an arbitral award or even a contract has the power to sever the good parts from the bad parts if that would save the document from invalidity or subserve the ends of justice. We feel that with a few alterations our guidelines can be made to conform to the said judgment. We direct that the following curative measures may be taken:

(a) In paragraph 11 “regularly practising in the High Court” is to be deleted.

(b) In paragraph 14 clause c “Legal Services Authority for pro bono work” is to be deleted.

(c) The second sentence of paragraph 20 is to be deleted.

(d) Entry 13 of the proforma application shall be deleted.

We direct the Registry/Secretariat of our Court, on the instructions of the Hon’ble the Chief Justice/ Permanent Committee to amend the guidelines according to this order and notify it in the gazette as early as possible preferably within one month from the date of communication of this order.

We direct that after amendment of the guidelines a fresh process is started for designation of Senior advocates identical to the one initiated in July, 2018. Those applying, if their applications are found in order, will be added to the list being considered now.

After the amended guidelines come into force, the twenty seven amongst, the thirty candidates who have not been recommended shall be reconsidered if they make a formal application for review of their candidature within four weeks from date or such extended date fixed by the Permanent Committee. Thereafter, the other candidates who applied according to the July notification will be considered followed by the candidates who apply after a new process for appointment is started further to this order. Any other decision or action or recommendation of the Permanent Committee is not interfered with.

This writ application is partly allowed. No order as to costs.

(I. P. MUKERJI, J.)

Amrita Sinha, J.

I have read the judgment to be delivered by brother Mukerji, J. and am in complete concurrence with the conclusion arrived at. I only like to add a couple of lines to the same.

At the very outset be it mentioned that the instant case is not an usual adversarial litigation. It relates to designation of Senior Advocates. The petitioner is an advocate practicing in the Calcutta High Court as well as in the District and Sessions Court of Kolkata and nearby areas for the last 27 years. He has specifically mentioned in the petition that he has no personal or private interest in the case and has neither applied for, nor is desirous of applying for being designated as a Senior Advocate. His sole reason to file the

present Public Interest Litigation is to ensure that the standards of excellence and professional etiquette of the members of the Bar are not lowered.

The issue in question was dealt with extensively by the Hon'ble Supreme Court in the case of Indira Jaising vs. Supreme Court of India (supra). In paragraph 73 of the said judgment the Court laid down certain norms/guidelines which would govern the exercise of designation of Senior Advocates by the Supreme Court and all the High Courts in the country.

The Supreme Court in the said judgment categorically held that in order to designate an advocate as a Senior Advocate three conditions stipulated under Section 16 of the Advocates Act, 1961 must be fulfilled, viz. (i) ability; (ii) standing at the Bar; and (iii) special knowledge or experience in law that the persons seeking designation has acquired. Recognition of qualities of merit and ability demonstrated by in-depth knowledge of intricate question of law, fairness in Court proceedings, consistent with the duties of a counsel as an officer of the Court and contributions in assisting the Court to charter the right course of action in any given case, all of which would go to determine the standing of the advocate at the Bar. Such an object would enhance the value of the legal system that advocates represent.

The Court held that the designation of "Senior Advocate" is hardly a title. It is a distinction; a recognition. The Court expressed 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 seeking such honour must be subjected to

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

Section 16(3) of The Advocates Act, 1961mentions that Senior Advocates, shall in the matter of their practice, subject to such restrictions as the Bar Council of India may, in the interest of the legal profession, prescribe and Section 23(5)(i) stipulates that Senior Advocates will have the right of pre-audience over other advocates.

Neither the ability nor the special knowledge of an advocate be adjudged or measured with mathematical precision. It is always relative and subjective in nature.

Section 16(2) mandates the opinion of the Supreme Court or the High Court for arriving at a decision whether an advocate is deserving of the distinction. The Concise Oxford English Dictionary meaning of the word “opinion” means judgment or belief based on grounds short of proof. It is belief or a conviction resulting from what one thinks on a particular question.

For the Court to form an opinion to confer the distinction upon an advocate the Court has to take into consideration various factors. In Indira Jaising (supra) the Court has laid down the parameters on which points are to be awarded. It becomes easy for the Court to form an opinion of an advocate if the said advocate appears regularly or at frequent intervals before the Court. The arguments made in court, the promptitude by which an advocate reacts to a given situation, command over the subject, attitude towards the fellow members all becomes very clear and visible when the advocate is physically present in court to conduct a matter. In case the advocate is not a regular

practitioner of the High court then the opinion of the Court has to be formed relying upon the judgments in respect of cases in which the advocate appeared. 40 points are allotted on the judgments including the *pro bono* work done by the advocate concerned. 25 points are allotted on the personality and suitability test on the basis of interview/interaction.

As far as experience is concerned the Supreme Court allotted 20 points depending upon the tenure of practice. The Court has already set out that for 10 to 20 years of practice 10 points will be allotted and beyond 20 years 20 points to be allotted. As the points to be allotted on the basis of the period of practice have already been fixed by the Hon'ble Supreme Court there is no plausible reason to alter the same. In fact in paragraph 72 of the said judgment the Court opined against relaxation of the eligibility criteria.

To arrive at a subjective opinion the live performance of the concerned advocate before the Court becomes extremely vital. The judgments are written, delivered by the judges and they hardly reflect the conduct, behaviour and approach of the concerned advocate. If the applicant advocate is not a practitioner of the High Court then the Permanent Committee has to rely upon the information and data supplied by the applicant advocate as well as collect information from the sources as mentioned in the impugned notification.

There are as many as six sources mentioned in the said notification. Legal Services Authority is one of them. There may be instances where the concerned advocate has no occasion to associate himself with the said Authority but has conducted pro bono work in respect of other clients. In

such a case the concerned advocate shall indicate the pro bono work conducted by him and it will be the Secretariat to verify the said statement.

To form an opinion about the personality and suitability of the advocate only on the basis of interview/interaction is a tough task as the time for interview/interaction is very limited. Possibly that was the reason why paragraph 11 of the impugned notification dated 12th July, 2018 sought application from regular practitioner of the High Court for being designated as Senior Advocates. But as neither The Advocates Act nor the Indira Jaising judgment restricts conferment of designation of Senior Advocates to only High Court practitioners accordingly I concur with the conclusion of brother Mukerji, J. that the restriction mentioned in the said paragraph has to be deleted. The notifications of the Supreme Court and the Karnataka High Court inviting applications for designating Senior Advocates annexed to the writ petition also do not restrict the designation to be conferred to only the Supreme Court or the High Court practitioners.

The Supreme Court sets out two modes of accepting applications for designating Senior Advocate – (i) proposal of the Hon'ble Judges and (ii) by the advocate concerned. All the names are enlisted, the Permanent Secretariat compiles the relevant data and information and names of the intending candidates are published in the official website inviting suggestions/views of stakeholders. The meaning of the expression "stakeholder" is wide enough to fit in any person who wishes to object the conferment and the Permanent Committee shall certainly do the needful to include any other class of persons as stakeholders if occasion so arise. Thereafter the advocates are called for

interview before the Permanent Committee for testing their suitability and personality. The names of the shortlisted candidates are placed before the Full Court for taking the final call.

In terms of the guidelines published on 12th July, 2018 the Registrar General of the High Court published a notification on 10th August, 2018 inviting suggestions/views from the stakeholders in respect of the enlisted advocates for consideration of designating as Senior Advocates. The said list has been annexed to the writ petition. There are as many as 75 advocates seeking such designation. The list primarily contains the names of advocates regularly practising in this High Court and only a handful of them from the District Courts.

Senior Advocates have a responsibility and duty towards the Court, the junior members of the Bar as well as the litigant public. They act as role models to the junior members who look up to them and try to emulate them. They are the wealth, asset of the legal fraternity. A Senior Advocate commands respect both from the Bar as well as the Bench. He is a person who with his grasp over the law will be able to guide the Court to arrive at a proper conclusion in a case. He is a person the Court looks upon for assistance while deciding an intricate question of law. It is not that the Senior Advocate will gain anything out of the said recognition. It is the Bench and the Bar alike who will be enriched by the experience, expertise and knowledge of the person concerned. It is not a race or a competition. The designation is not a prize or a reward. It is an honour, a privilege. There is no concept of vacancy. It is not as if one person is conferred the designation others will lose a chance. Any person who

fulfils the requisite criteria will be eligible to be considered for the recognition. The points are mere formalities to streamline the process. The dates within which the applications are to be filed are also a part of the procedural formality. The hue and cry raised in granting only a week's time for submitting the application hardly makes any sense. In case an applicant misses the deadline to file the application he can always file the same on the next occasion. An advocate will not lose anything or will not be prejudiced in any manner if he does not get the said recognition. It is the Bar and the Bench which will lose the opportunity to make good use of the experience and the expertise of the said advocate.

When an advocate "applies" for the designation of Senior Advocate he does so on the basis of self-assessment. The assessment has to be honest and critical. He has to evaluate his ability, experience and expertise in a proper manner. There is no reason to feel inferior but he has to question himself as to whether he is deserving of the said recognition.

In the absence of proper checks and balances the Secretariat will be flooded with applications from undeserving candidates. The Supreme Court has very categorically mentioned in Indira Jaising (supra) that the credentials of every advocate must be subject to utmost strict process of scrutiny, which indicates that the recognition should go only to the best candidate. There is hardly any reason for relaxation of the points as fixed by the Supreme Court. If a person fails to achieve the required marks he can surely wait for his next turn and not look for relaxation of the marks. Providing grace marks to undeserving candidates will mark the beginning of downfall of the standard of the special

class of advocate namely 'Senior Advocates'. The entire judicial system will come to disrepute. The standard should be set very high so that the same may act as deterrent to mediocre level advocates to even apply for the same, otherwise the permanent Secretariat will be left grappling with applications from undeserving candidates and the Permanent Committee will be saddled with the task of selecting the best amongst the rest.

Certified photocopy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Amrita Sinha, J.)