

Court No. - 2

Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 225 of 2022

Petitioner :- Rama Kant Dixit

Respondent :- U.O.I. Thru. Cabinet Secy. South Block, New Delhi And Others

Counsel for Petitioner :- Asok Pande

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

Hon'ble Devendra Kumar Upadhyaya,J.

Hon'ble Subhash Vidyarthi,J.

This petition invokes our jurisdiction under Article 226 of the Constitution of India and has been filed ostensibly in public interest by a practising lawyer of this Court. Prayers made in this petition are extracted herein below:-

"1. To issue a writ of mandamus thereby directing the respondent number two to appoint new Advocate General for State without any further delay after accepting the resignation of the respondent number three already submitted to the Government a long back.

2. To issue a writ of Mandamus thereby directing the Government of Bharat as well as State of Uttar Pradesh to fix the monthly remuneration which is to be paid the AG (Attorney General for Bharat as well Advocate General for the State) for performing the duties of the office.

3. To issue any such other order or direction which this Hon'ble Court may deemed fit and proper in the facts and circumstances of the present case."

Learned Chief Standing Counsel Sri Abhinav N Trivedi representing respondent no.2 has drawn our attention to certain averments made in para 15 of the writ petition and has submitted that contents of the said paragraph of the writ petition have been sworn in the affidavit filed in support of this petition by the petitioner on the basis of his personal knowledge. He has stated that any public interest litigation with such unsubstantiated, irresponsible, reckless and even scandalous pleadings should not be entertained. He specifically draws our attention to the later part of paragraph 15 where certain allegations have been made by the petitioner in respect of the lawyers' community at large stating that some 'big lawyers' are trying to manage their appointment as Advocate General and for that they are willing to pay crores of rupees to persons who can manage their appointment on the post. Further averment is that this is happening because crores of rupees per year are being paid to the Advocate General from the State Exchequer

and by "good use" of his office, he can manage hundreds of crores of rupees from other sources.

When we peruse the affidavit filed in support of the writ petition, we find that the contents of paragraphs 1 to 21, which include paragraph 15, have been sworn by the petitioner to be true on the basis of his personal knowledge. As to what is the source of such irresponsible, reckless and even scandalous statement is not disclosed and the only source disclosed in the affidavit is the personal knowledge borne by the petitioner.

On our direction, Sri Rama Kant Dixit, the petitioner, is present. When we enquired from him as to what is the basis of such irresponsible statement made in the writ petition, he has stated that he has simply put his signature on the writ petition even without going through the averments made therein.

We appreciate the candid confession made by the petitioner, who is a practising lawyer of this Court of standing having a 27 years, however, we are not impressed. He has also informed that he is a member of the Governing Council of Oudh Bar Association. We also express our concern for the manner in which such a statement appears to have been made in the writ petition, that too, in a petition filed allegedly in larger public interest. We are constrained to observe that filing a PIL with no sense of responsibility can not be appreciated. Such an act on the part of the petitioner is reprehensible.

In the aforesaid view of the matter, we are of the opinion that this petition should not be permitted to be pursued any further by the petitioner.

Accordingly, we discharge him from the petition.

Considering the prayers made in the writ petition, what we find is that the writ petition concerns itself with the appointment of the Advocate General, a constitutional functionary, in the State of U.P. The petition contains another prayer regarding a direction to be issued to the Government of India as well as State of U.P. to fix monthly remuneration which is to be paid to the Attorney General and to the Advocate General for performing the duties of their respective offices. In support of the said prayer, certain averments have been made in the writ petition. However, when we peruse the said averments made in support of prayer no.2, we find that no details as regards the remuneration being paid or drawn by either Attorney General or Advocate General in the State of U.P. have been given. The writ petition also lacks adequate pleadings in support of this prayer.

Such information ought to have been obtained by the petitioner before making any averments of the nature which have been made in the writ petition in support of the said prayer. Accordingly, we are of the opinion that this petition, so far as prayer no.2 is concerned, cannot be entertained on account of deficient pleadings in this regard.

The petition to that extent is **dismissed**.

We, however, find that prayer no.1 made in the writ petition concerns public at large, as non availability of the Advocate General, who is a constitutional functionary, cannot be said to be in the interest of any one including even the State executive.

As regards the appointment of Advocate General, lengthy submissions have been made by Sri Asok Pande relying upon a Division Bench judgment of this Court delivered on 21.08.2014 in ***Writ Petition No.7335 (M/B) of 2021 (Rohin Tripathi vs. State of U.P. and others)***.

On hearing the matter, what we find is that the judgment in the case of ***Rohit Tripathi (supra)*** refers to a judgment of Hon'ble Supreme Court in the case of ***M. T. Khan and others vs. Government of A.P. and others, reported in (2004) 2 SCC 267***. Observations made by the Division Bench of this Court in the case of ***Rohit Tripathi (supra)*** are of some relevance considering the issue raised in this petition. It is not in dispute that in terms of Article 165 of the Constitution of India, Advocate General has to be appointed, who discharges not only his constitutional obligations as mandated by Article 165 of the Constitution of India, but also his other statutory functions and duties mandated by various legislations such as Code of Criminal Procedure, Code of Civil Procedure and Contempt of Courts Act and may be certain other enactments or legislations. There is no doubt that as per the scheme of our constitution, any vacancy in the office of Advocate General should not be permitted to remain unfilled without any effort to fill it up.

It has been informed that the incumbent Advocate General has tendered his resignation, though the same has not been accepted. Thus, the factual scenario which emerges is that at present office of Advocate General is not vacant. However, we have also been informed that the incumbent Advocate General after submitting his resignation from the office has vacated his official accommodation, he has also vacated his office in the High Court, Lucknow and further that he has not been discharging the duties and functions of the office of Advocate General.

At this juncture, Sri Abhinav N Trivedi, learned Chief Standing Counsel has submitted, on the basis of instructions, that resignation tendered by incumbent Advocate General and the matter relating to appointment of new Advocate General will be taken up simultaneously by the State Government and for that purpose he has been instructed to pray that two weeks' time may be granted.

We have already noticed above that the office of Advocate General cannot be permitted to be left vacant. Any vacuum in the office of a constitutional functionary may lead to very unsavory situation and that would be completely impermissible not only having regard to the scheme of our constitution, but also bearing in mind various statutory functions which are to be performed by the Advocate General.

We, thus, feel that time as prayed for by the State through learned Chief Standing Counsel is more than required.

We expect that a decision in this regard shall be taken at the earliest and for the said purpose we grant a week's time.

List this case on 16th May, 2022 as fresh.

We express our solemn hope and expectation that by the next date of listing, the State shall take all remedial measures to ensure that the office of Advocate General does not remain either vacant or non-functional.

Since for the reasons disclosed in the preceding paragraphs we have discharged the petitioner from the petition, we appoint Sri Satish Chandra 'Kashish' a practising lawyer of this Court to assist us as Amicus Curiae in the matter. Sri Asok Pande shall also be at liberty to assist the Court in the matter on the next date.

Office is directed to change the cause title of present petition and register it as "**Suo Motu PIL in re: Appointment of/Vacancy in the office of Advocate General**".

Office is also directed to furnish a copy of petition to learned Amicus Curiae, Sri S.C.Kashish.

Let certified copy of this order be issued to the parties on payment of usual charges. However, certified copy of this order shall be provided to Sri S.C. Kashish by the office free of charge.

Order Date :- 6.5.2022

Renu/-