



AFR
Reserved

Court No. - 21

Case :- WRIT - C No. - 4794 of 2019

Petitioner :- Santosh Kumar Pandey

Respondent :- State Of U. P. and 17 Others

Counsel for Petitioner :- Achyut Jee

Counsel for Respondent :- C.S.C.

Hon'ble Pradeep Kumar Singh Baghel, J.

Hon'ble Pankaj Bhatia, J.

(Per : Hon'ble Mr. Justice Pradeep Kumar Singh Baghel, J.)

I agree with the view of my learned brother and the final order proposed by him but I would like to add few lines of my own to highlight some important aspect of the question involved in the matter.

A spate of writ petitions are filed in this Court whenever the State Government appoints Government Counsel (Civil, Criminal and Revenue) or refuses to renew their tenure and proposes new panel in the districts or after change of the Government, in spite of the fact that the Supreme Court in unbroken line of decisions has settled the law in respect of appointment, termination and renewal of tenure of the Government Counsel. The litigation is unabated.

The facts of the case have been very clearly and succinctly set out by my learned brother and it is not necessary to repeat the same.

Before adverting to the judgments of the Supreme Court on the issue, it would be appropriate to advert to the provisions of the Legal Remembrancer's Manual¹ and the relevant provisions of the Criminal Procedure Code, 1973².

The L.R. Manual came into force in the year 1975. It contains executive instructions. It regulates, amongst others, the appointments of the District Government Counsel (Criminal, Civil and Revenue) and the

1 L.R. Manual

2 Cr.P.C.

State Counsel in the High Court.

Chapter I of the L.R. Manual deals with interpretations. Paragraph 1.03 of the L.R. Manual provides that there shall be two branches in the Secretariat of the State Government. In both the branches the Judicial Officers are appointed.

Chapter III of the L.R. Manual deals with the Legal Remembrancer to the Government and his duties. Paragraph-3.02 thereof says that he is also called Judicial Secretary. Paragraph- 3.04 says that he is the Chief Law Officer of the State. He is a senior Judicial Officer of the District Judge rank. Amongst other, one of his duties is to deal with the appointment of law officers in the High Court and the Supreme Court. Paragraph- 3.17 provides that there shall be the posts of Additional, Joint, Deputy and Assistant Legal Remembrancers, and every Additional, Joint and Deputy Legal Remembrancers shall be the *ex officio* Special Secretary, Joint Secretary and Deputy Secretary respectively.

One of the objects to appoint Judicial Officers in the Secretariat is that they are *ex officio* authorised to act for the Government in respect of all judicial proceedings and to give proper legal advise to the Government. Paragraph-3.03 lays down the duties of the Judicial Secretary-cum- Legal Remembrancer.

Chapter VII of the L.R. Manual contains the provisions relating to the District Government Counsel. Paragraph- 7.03 enumerates the procedure for appointment of the Government Counsel in the district. It includes the qualification, consultation by the District Magistrate with the District Judge in respect of the suitability and merit of each candidate. Paragraphs- 7.03 and 7.07 of the L.R. Manual, being relevant for the purpose, are extracted below:

“7.03. Applications and qualifications—
(1) Whenever the post of any of the Government Counsel in the district is likely to fall vacant within the next three months, or when a new post has been

created, the District Officer concerned shall notify the vacancy to the members of the Bar. Members eligible for consideration would be those having at their credit a practice of 10 years in case of District Government Counsel, 7 years in case of Assistant District Government Counsel and 5 years in case of Sub-District Government Counsel. The District Officer shall ask those who want to be considered for appointment to a particular office to give their names to him with particulars such as age, length of practice at the Bar, proficiency in Hindi, Income-tax paid by them on professional income during last 3 years and if not assessed the return submitted by them, if any, details of the work handled by them during the course of the preceding two years duly verified by court and whether they have practised on criminal, civil and revenue side.

(2) The District Government Counsel and legal practitioners of the neighbouring districts may also send the above particulars for the post of District Government Counsel through their District Officers, who shall forward the same to the District Officer of the district in which the appointment is to be made, with such remarks as they deem fit.

(3) The names so received shall be considered by the District Officer in consultation with the District Judge. The District Officer shall give due weight to the claim of the existing incumbents (Additional/ Assistant District Government Counsel), if any, and shall submit confidentially in order of preference the names of the legal practitioners for each post to the Legal Remembrancer giving his own opinion particularly about his character, professional conduct and integrity and the opinion of the District Judge on the suitability and merits, of each candidate. While forwarding his recommendations to the Legal Remembrancer the District Officer shall also send to him the biodata submitted by other incumbents with such comments as he and the District Judge may like to make. In making the recommendations, the proficiency of the candidate in civil or criminal or revenue law, as the case may be, as well as in Hindi shall particularly be taken into consideration:

Provided that it will also be open to the District Officer to recommend the name of any person, who may be considered fit, even though he may not have

formally supplied his biodata for being considered for appointment. The willingness of such a person to accept the appointment if made shall, however, be obtained before his name is recommended.

7.04. *** *** ***

7.05. *** *** ***

7.06. *** *** ***

7.07. Political Activity—*The District Government Counsel shall not participate in political activities so long they work as such; otherwise they shall incur a disqualification to hold the post.*

NOTE— *The term political activity includes membership of any political party or local body as also press reporting work.”*

Insofar as the appointment of the Public Prosecutors is concerned, it is governed by the provisions of the Cr.P.C. but the renewal is regulated by the L.R. Manual. The State of Uttar Pradesh by the Uttar Pradesh Act No. 18 of 1991 with effect from 16th February, 1991 amended sub-section (1) of Section 24 of the Cr.P.C. and sub-sections (4), (5) and (6) of Section 24 have been omitted. Similarly, the words “after consultation with the High Court” have also been omitted from sub-section (1) of Section 24 Cr.P.C..

The issue with regard to nature of office of the Government Pleader came to be considered for the first time in the case of **Mundrika Prasad Singh v. State of Bihar**³, wherein Hon'ble Mr. Justice V.R. Krishna Iyer speaking for the Bench held that the Government Pleader holds a public office. The Court quoted with approval the observations of the Madras High Court in the case of **Ramachandran v. Alagiriswami**⁴ which reads thus:

"The duties of the Government Pleader, Madras are duties of a public nature. Besides, as already explained the public are genuinely concerned with the manner in which a Government Pleader discharges his duties because, if he handles his cases badly, they have

³ (1979) 4 SCC 701

⁴ AIR 1961 Mad 450

ultimately to foot the bill. The Rajasthan case does not take into account all the aspects of the matter.

(36) The learned Advocate General argued that the Government Pleader, Madras is only an agent of the Government, that his duties are only to the Government who are his principals and that he owes no duty to the public at all and that for that reason he would not be the holder of a Public Office.

(37) It is difficult to accept this view. The contention of the learned Advocate General may have been less untenable if the duties of the Government Pleader were merely to conduct in courts cases to which Government are a party. But, as the rules stand, he has a number of other duties to discharge. Besides, even if his only duty is the conduct of cases in which Government have been impleaded, still as explained more than once before the public are interested in the manner in which he discharges his duties.

(90) I am clearly of opinion that having regard to the fact that the Government Pleader of this court is employed by the State on remuneration paid from the public exchequer and having regard to the various functions and duties to be performed by him in the due exercise of that office, most of which are of an independent and responsible character, the office must be held to be a public office within the scope of a quo warranto proceeding.”

In **Kumari Shrilekha Vidyarthi and others v. State of U.P. and others**⁵ the Supreme Court has elaborately analysed the provisions of the L.R. Manual, the concept of presence of some public element in the State action while appointing the Government Counsel, the scope of judicial review and the application of Article 14 of the Constitution. The Court held that even in the sphere of contractual matters the State cannot exercise unbridled power unfettered by the requirement of Article 14. The State must act in the public interest and apply the requirement of Article 14 of the Constitution in the matter of appointment of the Government Counsel also. This root authority has been consistently followed by the Supreme Court in a large number of decisions. Reference may be made to

5 (1991) 1 SCC 212

the following judgments:

- (i) **Harpal Singh Chauhan and others v. State of U.P.**⁶;
- (ii) **State of U.P. and another v. Johri Mal**⁷;
- (iii) **State of U.P. v. Ramesh Chandra Sharma and others**⁸;
- (iv) **State of U.P. and others v. U.P. State Law Officers Association and others**⁹;
- (v) **State of Uttar Pradesh and others v. Rakesh Kumar Keshari and another**¹⁰;
- (vi) **Ghulam Nabi Dar and others v. State of Jammu and Kashmir and others**¹¹;
- (vii) **State of Uttar Pradesh and others v. Ajay Kumar Sharma and another**¹²; and
- (viii) **State of Uttar Pradesh and others v. Ajay Kumar Sharma and another**¹³.

The golden thread, which runs through all these decisions, is that the appointment of the Government Counsel must be made only on the basis of their merit, competence and in the public interest. The Supreme Court time and again has laid emphasis for non-political appointments and that the political affinity with a party in power should not be a consideration for the appointment.

In **Johri Mal (supra)** the Supreme Court has culled out the principle in the following terms:

“44. Only when good and competent counsel are appointed by the State, the public interest would be safeguarded. The State while appointing the Public

6 (1993) 3 SCC 552
 7 (2004) 4 SCC 714
 8 (1995) 6 SCC 527
 9 (1994) 2 SCC 204
 10 (2011) 5 SCC 341
 11 (2013) 3 SCC 353
 12 (2014) 3 SCC 568
 13 (2016) 15 SCC 289

Prosecutors must bear in mind that for the purpose of upholding the rule of law, good administration of justice is imperative which in turn would have a direct impact on sustenance of democracy. No appointment of Public Prosecutors or District Counsel should, thus, be made either for pursuing a political purpose or for giving some undue advantage to a section of the people. Retention of its counsel by the State must be weighed on the scale of public interest. The State should replace an efficient, honest and competent lawyer, inter alia, when it is in a position to appoint a more competent lawyer. In such an event, even a good performance by a lawyer may not be of much importance.”

(emphasis supplied)

The aforesaid observation of the Supreme Court has been reiterated and affirmed by the Supreme Court in the case of **Ajay Kumar Sharma and another**¹⁴ (*supra*). Paragraph-20 of the said judgement reads as under:

“20. ...In Johri Mal¹⁵, this Court has categorically rejected the claim of an advocate to continuous renewal or reappointment as a Government Advocate. We entirely agree with this exposition of the law. We think that the correct approach is to ensure the competency of advocates being considered for appointment of Additional District Government Counsel, Assistant District Government Counsel, Panel lawyers and Sub District Government Counsel. It seems to us that it would be an incorrect approach to start this process by considering the re-appointment or renewal of existing Government Counsels since that would dilute, nay, dissolve the discretion of the Government to appoint advocates whom they find trustworthy. The High Court has followed the second approach leading to the dissatisfaction of the State Government and their resentment that their realm of discretion has been eroded for no justifiable reason.”

In the case of **State of Punjab and another v. Brijeshwar Singh Chahal and another**¹⁶, the Supreme Court elaborately considered all the previous precedents on the issue. Though the case arose

14 (2016) 15 SCC 289

15 State of U.P. v. Johri Mal, (2004) 4 SCC 714

16 (2016) 6 SCC 1

in different context but it has laid down the law in respect of appointment of the Government Counsel for all States including the State Counsel who are appointed in the High Court also. The Supreme Court formulated four questions for determination. The question nos. (i), (ii) and (iv) are only in respect of State of Punjab and Haryana, so we are omitting the same. However, question no. (iii) is relevant for our purpose as in answer to the third question the law has been laid down by the Supreme Court for all the States. The question no. (iii) reads as under:

“(iii) Whether appointment of Law Officers by the State Governments need to be made on a fair, reasonable, non-discriminatory and objective basis.”

While answering question no. (iii) the Supreme Court held that the Government and its instrumentality are the trustee of power vested in them and custodians of public interest, hence it is the duty of the State that they must exercise their power to engage advisers in a fair, reasonable, non-discriminatory and objective manner like they are expected to do for engagement/ appointment of the civil servants, agents, representatives, etc. It has been held that arbitrariness has no place in a polity governed by the rule of law. Article 14 of the Constitution comes into place, if there is any arbitrary decision by the State Government. The Supreme Court in this case has considered the judgments of **Kumari Shrilekha Vidyarthi (supra)**, **U.P. State Law Officers Association (supra)** and **Johri Mal (supra)**. The Court has highlighted the need for appointment of the Government Counsel only on the basis of competence, sufficient experience and also standing at the Bar. The Court expressed its anguish that in certain cases recommendations are made by the District Magistrates and the persons who have a political affinity to party in power and the State is not expected to cancel their appointment with a change in the Government because a new party has taken over charge of the Government. The Court has emphasized the need of age-old tradition of appointing District Government Counsel in consultation with the District Judge. Following passage of **Brijeshwar Singh Chahal (supra)** in

this regard is apposite:

“38. ...The State Government counsel represents the State and thereby the interest of the general public before a court of law. This requires that Government Counsel have character, competence, sufficient experience as also standing at the Bar. The need for employing meritorious and competent persons to maintain the standard of the high office cannot be minimized, observed the Court, particularly, when the holders of the post have a public duty to perform. The Court also expressed anguish over the fact that in certain cases the recommendations are made by the District Magistrate having regard to the political affinity of the lawyers to the party in power and that State is not expected to rescind the appointments with the change in the Government because a new party has taken over charge of the Government. This Court also recognized the age-old tradition of appointing the District Government Counsel on the basis of the recommendations of the District Collector in consultation with the District Judge. The fact that the District Judge, who is consulted while making such appointment knows the merit, competence and capability of the lawyer concerned, was also recognized by the Court.”

(emphasis supplied)

In the above case, the Supreme Court has observed that the State is the single largest litigant and the statistics shows that in nearly 80% of the litigation pending in the Courts the State or one of its instrumentalities is party to it. The Court has highlighted the need of good assistance of the Government Counsel for quality of good judgments. The Court has further observed that quality of judgments is adversely affected by poor assistance at the Bar who are not sufficiently equipped in profound knowledge of subject, lack of experience in dealing with the different branches of law and above all high integrity. The Court has opined that if a fair, transparent and non-discriminatory process is not adopted, the administration of justice would badly suffer. The State must respect rule of the law. The State would fail in discharging its public duty to protect the public interest by appointing meritorious persons. Poor quality of

assistance rendered to the Courts by the State Counsel can cause serious harm to higher value of the justice. The Court has sum up its decision in the following terms:

“41.1. The Government and so also all public bodies are trustees of the power vested in them.

41.6. Appointment of Government Counsel at the district level and equally so at the High Court level, is not just a professional engagement, but such appointments have a “public element” attached to them.

41.7. Appointment of Government Counsel must like the discharge of any other function by the Government and public bodies, be only in public interest unaffected by any political or other extraneous considerations.

41.8. The Government and public bodies are under an obligation to engage the most competent of the lawyers to represent them in the Courts for it is only when those appointed are professionally competent that public interest can be protected in the Courts.

41.9. The Government and public bodies are free to choose the method for selecting the best lawyers but any such selection and appointment process must demonstrate that a search for the meritorious was undertaken and that the process was unaffected by any extraneous considerations.

41.10. No lawyer has a right to be appointed as a State/Government counsel or as Public Prosecutor at any level, nor is there any vested right to claim an extension in the term for which he/she is initially appointed. But all such candidates can offer themselves for appointment, re-appointment or extension in which event their claims can and ought to be considered on their merit, uninfluenced by any political or other extraneous considerations.

41.11. Appointments made in an arbitrary fashion, without any transparent method of selection or for political considerations will be amenable to judicial review and liable to be quashed.

41.12. Judicial review of any such appointments will, however, be limited to examining whether the process is affected by any illegality, irregularity or perversity/irrationality. The Court exercising the power of judicial review will not sit in appeal to reassess the merit of the candidates, so long as the method of appointment adopted by the competent authority does not suffer from any infirmity.”

Guided by the settled principle of the law referred above, we are of the view that in the case at hand the provisions of the L.R. Manual and the law laid down by the Supreme Court in the decisions referred above have been followed in breach. As noticed by my learned Brother in his judgment, the advertisement was issued on 08th December, 2017 inviting applications for appointment on the posts of District Government Counsel, Additional District Government Counsel and Assistant District Government Counsel. The District Magistrate in consultation with the District Judge sent a list to the State Government with certain directions, which were duly complied with by the District Magistrate after consultation with the District Judge, Ballia. This time a list of 51 names were sent by the District Magistrate but the Under Secretary, State of U.P. on 21st August, 2018 sent a communication to the District Magistrate to recommend the names of 19 persons. From a perusal of the original record it transpires that 19 fresh names were sent by the Hon'ble Minister on 21st August, 2018 for their appointment on 14-days basis in terms of Paragraph 7.10 of the L.R. Manual.

It is pertinent to mention that the District Magistrate in his communication dated 16th September, 2018 has clearly pointed out that in respect of the names recommended by the Hon'ble Minister the District Judge has not been consulted with regard to their experience, merit and character. Their character verification has not been made by the Police. The District Magistrate has also noted with regard to their engagement for 14-days in terms of the provisions under Chapter VII. Paragraph 7.10 may be met only from the panel prepared in consultation with the District

Judge. The State Government ignoring the said letter issued the impugned order. The relevant part of the communication/ letter of the District Magistrate dated 16th September, 2018 reads as under:

“उपरोक्त अधिवक्तागण जिनका नाम शासन से प्राप्त हुआ है, उनके कार्य अनुभव, व्यवसायिक आचरण, गुणावगुण के सम्बन्ध में न तो मा0 जनपद न्यायाधीश की कोई आख्या/संस्तुति प्राप्त है और न ही पुलिस विभाग से उनका चरित्र सत्यापन ही हुआ है।

अतएव उपरोक्त के दृष्टिगत शासकीय हित में वादों के पैरवी हेतु मेरा सुविचारित मत है कि शासन को भेजे गये पैनल जो मा0 जनपद न्यायाधीश बलिया द्वारा संस्तुत है, में से ही विधि परामर्शी निदेशिका के अध्याय 07 के प्रस्तर 7.10 के प्राविधानों के अन्तर्गत 14-14 दिनों के लिए अस्थायी वैकल्पिक व्यवस्था में शासकीय अधिवक्तागण के रिक्त पदों पर आबन्धन हेतु निर्णय लेने का कष्ट करें।”

The Under Secretary in his communication dated 29th November, 2018 issued the order for the appointment of 14 Government Counsel (Criminal, Civil and Revenue) under Paragraph 7.10 of the L.R. Manual.

It is distressing to note that despite the clear note of the District Magistrate that the procedure provided under the L.R. Manual has not been followed, inasmuch as the opinion of the District Judge in respect of the merit, competence and capability of the counsel recommended by the Hon'ble Minister has not been obtained, the State has appointed the Government Counsel. The District Magistrate has very clearly mentioned that the appointment should be made only from the earlier list of 51 persons which was prepared in consultation with the District Judge, but the State Government has completely ignored the note appended by the District Magistrate.

We are at pains to point out that from the original record we have not found any noting made by the Judicial Officers, who are posted in Judicial Secretariat in the State, against the illegal procedure adopted by the State Government. The one of the objects to post the Judicial Officers in the Secretariat is to ensure that they will give correct legal advice to the State Government because they are independent and are not functioning

under the State Government but they are part of judiciary. They are expected to work fairly, fearlessly and totally wedded to the rule of law. We are constrained to observe that the District Magistrate and the concerned Judicial Officers posted in Judicial Secretariat have abdicated their responsibility.

It is a well settled law that if an officer abdicated his power or duty on dictation of a superior authority, his action becomes illegal. Reference may be made to the judgments of the Supreme Court in the case of **Tarlochan Dev Sharma v. State of Punjab and others**¹⁷, **Dipak Babaria and another v. State of Gujarat and others**¹⁸, and the judgment of this Court in **Madan Kumar and others v. District Magistrate, Auraiya and others**¹⁹.

The Supreme Court in the case of **Tarlochan Dev Sharma (supra)** has observed as under:

“16. In the system of Indian Democratic Governance as contemplated by the Constitution, senior officers occupying key positions such as Secretaries are not supposed to mortgage their own discretion, volition and decision-making authority and be prepared to give way or being pushed back or pressed ahead at the behest of politicians for carrying out commands having no sanctity in law. The Conduct Rules of Central Government Services command the civil servants to maintain at all times absolute integrity and devotion to duty and do nothing which is unbecoming of a Government servant. No government servant shall in the performance of his official duties, or in the exercise of power conferred on him, act otherwise than in his best judgment except when he is acting under the direction of his official superior. ...”

The said judgment has been followed by the Supreme Court in the case of **Dipak Babaria (supra)** wherein the Court has considered this issue. Relevant part of the judgment reads as under:

“69. Besides, the present case is clearly a case

17 (2001) 6 SCC 260

18 (2014) 3 SCC 502

19 2013 (10) ADJ 606

of dictation by the State Government to the Collector. As observed by Wade and Forsyth in the 10th Edn. of Administrative Law:

“If the Minister’s intervention is in fact the effective cause, and if the power to act belongs to a body which ought to act independently, the action taken is invalid on the ground of external dictation as well as on the obvious grounds of bad faith or abuse of power.”

The observations by the learned authors to the same effect in the 7th Edn. were relied upon by a Bench of three Judges of this Court in Anirudhsinhji Karansinhji Jadeja v. State of Gujarat²⁰. In that matter the appellant was produced before the Executive Magistrate, Gondal, on the allegation that certain weapons were recovered from him. The provisions of TADA had been invoked. The appellant’s application for bail was rejected. A specific point was taken that the DSP had not given prior approval and the invocation of TADA was non est. The DSP, instead of granting prior approval, made a report to the Additional Chief Secretary, and asked for permission to proceed under TADA. The Court in paras 13, 14, 15 has held this to be a clear case of “dictation”, and has referred to Wade and Forsyth on Surrender, Abdication and Dictation.”

This Court in the case of **Madan Kumar (supra)** had the occasion to deal with similar issue. In paragraph-21 of the said judgment the Court has quoted with approval excerpts from the Principles of Judicial Review, 1999 edition, by Professor De Smith and the Administrative Law, 7th Edition by Professor Wade in following terms:

“21. Professor De Smith, in his Principles of Judicial Review 1999 Edition, page 240 has aptly said :

"an authority entrusted with a discretion must not, in the purported exercise of its discretion, act under the dictation of another body or person. In at least two Commonwealth cases, licensing bodies were found to have taken decision on the instructions of the heads of Government who were prompted by extraneous

motives. But, as less colourful cases illustrate, it is enough to show that a decision which ought to have been based on the exercise of independent judgment was dictated by those not entrusted with the power to decide, although it remains a question of fact whether the repository of discretion abdicated it in the face of external pressure."

Professor Wade in his Administrative Law, 7th Edition has dealt with "Surrender, Abdication, Dictation" and "Power in the wrong hands" in the following words:

"Closely akin to delegation, and scarcely distinguishable from it in some cases, is any arrangement by which a power conferred upon one authority is in substance exercised by another. The proper authority may share its power with someone else, or may allow someone else to dictate to it by declining to act without their consent or by submitting to their wishes or instructions. The effect then is that the discretion conferred by Parliament is exercised, at least in part, by the wrong authority, and the resulting decision is ultra vires and void. So strict are the Courts in applying this principle that they condemn some administrative arrangements which must seem quite natural and proper to those who make them...."

Ministers and their departments have several times fallen foul of the same rule, no doubt equally to their surprise...."

22. This paragraph of Professor Wade has been applied by the Supreme Court in the case of Anirudhsinhji Karansinhji Jadeja v. State of Gujarat, (1995) 5 SCC 302."

It was submitted by learned counsel for the petitioner that the appointments have been made on the ground of political affiliation of the persons, who have been recommended by the State Government. Hence, the impugned order is totally arbitrary. He further submits that from the record it is evident that the professional competence, integrity and character have not been considered in terms of the provisions of the L.R.

Manual, hence no consultation has been made with the District Judge.

We find sufficient force in the submission of learned counsel for the petitioner. From the case of **Kumari Shrilekha Vidyarthi (supra)**, which has been reiterated in the **Uttar Pradesh State Law Officers' Association (supra)** and **Johri Mal (supra)**, we find that the State is not expected to appoint persons with political affinity with the party in power and appointment made in the arbitrary manner for political consideration will be amenable to judicial review and is liable to be quashed.

We are constrained to observe that in spite of large number of judgments of the Supreme Court on this issue the State Government is appointing the Government Counsel in the State in utter disregard to the principles laid down by the Supreme Court. We are a democratic society and are governed by the rule of law. One of the facets of the rule of law is complete supremacy of the law and it is antithesis to arbitrary and/or unguided discretionary power. The rule of law is one of the basic structures of our Constitution. It is apposite to quote '*the rule of the law requires that the Government should be subject to the law, rather than law subject to the Government.*²¹'

In **Daryao and others v. State of U.P and others**²² way back in 1962 the Supreme Court has highlighted the need for the observance of the rule of law in the following terms:

“11. ...The binding character of judgments pronounced by courts of competent jurisdiction is itself an essential part of the rule of law, and the rule of law obviously is the basis of the administration of justice on which the Constitution lays so much emphasis. As Halsbury has observed “subject to appeal and to being amended or set aside a judgment is conclusive as between the parties and their privies, and is conclusive evidence against all the world of its existence, date and legal consequences”.

²¹ Wade and Forsyth, Administrative Law, 2009 Edition.

²² AIR 1961 SC 1457 : (1962) 1 SCR 574

In **S.G. Jaisinghani v. Union of India and others**²³ the Supreme Court has observed as under:

“14. In this context it is important to emphasize that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the Rule of law.”

In **Arundhati Roy, In Re**²⁴ the Supreme Court has reiterated the law thus:

“ “Rule of law” is the basic rule of governance of any civilised democratic polity. Our constitutional scheme is based upon the concept of rule of law which we have adopted and given to ourselves. Everyone, whether individually or collectively is unquestionably under the supremacy of law. Whoever the person may be, however high he or she is, no one is above the law notwithstanding how powerful and how rich he or she may be. For achieving the establishment of the rule of law, the Constitution has assigned the special task to the judiciary in the country. It is only through the courts that the rule of law unfolds its contents and establishes its concept....”

It is a pity that the circumstances compel us to state something more. Our experience shows that the State functionaries in same manner are appointing the State Counsel in the High Court. We are constrained to observe that huge number of State Counsel, who were working for last several years, have been removed by a single stroke of pen and fresh appointments have been made without bearing in the mind the law laid down by the Supreme Court in the above mentioned judgments. We are

²³ AIR 1967 SC 1427 : (1967) 2 SCR 703

²⁴ (2002) 3 SCC 343

not getting proper assistance from the State Counsel. It appears to us that in a large number of fresh appointments merit and professional experience ought to have been given due preference in terms of the law laid down by the Supreme Court in the above cases.

Regard being had to the fact that Chapter V of the L.R. Manual deals with the appointment of the Chief Standing Counsel and Standing Counsel in the High Court. Paragraph 5.02 of the L.R. Manual enjoins that the views of the Advocate General or the Chief Justice or any Judge of the High Court may also be taken. For the sake of convenience Paragraph 5.02 of the L.R. Manual is extracted below:

“5.02 Views of Advocate General may be taken— *In making such appointments as aforesaid the Government may, if considered necessary, take into consideration the views of the Advocate General or the Chief Justice or any Judges of the High Court or of any Committee that may be constituted for the purpose. All such appointments shall be notified in the Official Gazette.*

NOTE— *General instructions relating to appointment and tenure of the Law Officers of the State as issued under Judicial (A-I) Department Office Memorandum no. 2556(i)/ VII-AI—202-51, dated June 29, 1968, are given in Appendix 'B'.”*

In this regard in **Brijeshwar Singh Chahal (supra)** also the Supreme Court has observed for appointment of a Committee on similar line. The Supreme Court in Paragraph- 51.2 of the judgment has directed the State to constitute a Selection Committee to determine the suitable candidates for appointment as State Counsel. The Secretary, Department of Law, in each State shall be Member-Secretary of the Selection Committee. It is provided that the recommendation of the said Committee shall be considered by a Committee of Judges constituted by the Chief Justice. The said Committee shall record its view regarding suitability of the candidates included in the panel. The said direction has been issued for the State of Punjab and Haryana, but the Supreme Court in Paragraph 51.6 has observed as under:

“51.6. We further clarify that although we are primarily concerned with the procedure regarding selection and appointment of Law Officers in the State 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.”

(Emphasis supplied)

In the light of the judgments of the Supreme Court in **Brijeshwar Singh Chahal (supra)** and Para 5.02 of the L.R. Manual we would like to have issued a direction to constitute a Committee but no such relief has been sought by the petitioner, hence we left this issue open.

For all the reasons mentioned above, we find that the decision of the State Government for appointment of 14 persons in terms of Paragraph 7.10 of the L.R. Manual is arbitrary, illegal and contrary to the provisions of the L.R. Manual and the law laid down by the Supreme Court in the cases referred above. Accordingly, the writ petition is allowed in terms of the operative portion of the judgment of my learned brother.

Date: 07th May, 2019

Digamber/SKT/-

**AFR
RESERVED**

Court No. - 21

Case :- WRIT - C No. - 4794 of 2019

Petitioner :- Santosh Kumar Pandey

Respondent :- State Of U P And 17 Others

Counsel for Petitioner :- Achyut Jee

Counsel for Respondent :- C.S.C.

Hon'ble Pradeep Kumar Singh Baghel,J.

Hon'ble Pankaj Bhatia,J.

(Delivered by Hon'ble Pankaj Bhatia,J.)

Heard Sri Achyut Jee, learned counsel for the petitioner and Sri Neeraj Tripathi, learned Additional Advocate General, appeared on behalf of respondents.

The present petition raises a very important question pertaining to the appointments of District Government Counsel (in short D.G.C.) at the District Court, Ballia. The problem is recurring in nature and although the law on the question is fairly well settled, however, the present petition raises concerns with regard to the manners of powers exercised in making the appointments of D.G.C. at the District Courts.

The allegation made by the petitioner in brief are as follows:

The petitioner is an Advocate and was appointed as Assistant District Government Counsel on 14.1.2015 under the provision of paragraph 7.10 of the Legal Remembrancer's Manual (hereinafter referred to 'L.R. Manual') which governs the manner of appointment of District Government Counsels in the State of Uttar Pradesh. The petitioner discharged his duties till 01.05.2016 and his appointment was renewed from time to time.

The present writ petition has been filed stating that in pursuance of an advertisement issued on 08.12.2017 applications were invited for

appointment to the post of D.G.C., A.D.G.C. and Assistant D.G.C. in terms of the provisions of Para 7.3 of L.R. Manual, a copy of the said advertisement has been filed as Annexure-10 to the writ petition. The petitioner, desirous of being appointed, also applied under the said advertisement for being considered for appointment.

In terms of the applications received under the said advertisement, the District Magistrate sent all the applications to the District Judge, Ballia, who in turn, formed a Committee of three judges' for shortlisting for recommending the eligible candidates for being considered for appointment in pursuance of the advertisement dated 08.12.2017. The said Committee constituted by the District Judge, Ballia recommended the name of 254 counsels as suitable for being considered for appointment and the same list was sent by the District Magistrate to the Legal Remembrancer/State Government. The State Government returned the said list of 254 counsels as short-listed by the Committee with a direction to the District Magistrate, Ballia to select three names against one post as advertised in the advertisement dated 08.12.2017. In pursuance of the said directions of the State Government, the District Magistrate once again sent all the records to the District Judge, Ballia for suggesting the names of three persons against one vacancy as was directed by the State Government. The District Judge, Ballia once again formed a Committee of four members and the said Committee interviewed the applicants and shortlisted 51 names as considered appropriate by them for being considered for appointment, the said list of 51 names was sent to the District Magistrate, Ballia, who in turn, forwarded the said list to the State Government/Legal Remembrancer for its consideration and suitable directions. The list of earlier 254 candidates and the subsequent list of 51 candidates has been filed by the petitioner as Annexure-13 to the writ petition. The petitioner claims that his name appears in both the said lists. It is stated and argued at the bar that instead of selecting the candidates out of the said 51 shortlisted candidates, the Under Secretary, State of U.P.

vide his letter dated 21.8.2018 sent a letter to the District Magistrate asking him to recommend the name of 19 persons (as mentioned in the letter) for being appointed for a period of 14-14 days. The said list was not carved out, out of the 51 candidates list that was initially forwarded by the District Magistrate (Annexure-13 to the writ petition) The District Magistrate, Ballia, on the basis of the said directives, issued by Under Secretary, recommended the said 19 names as were forwarded to him by the Under Secretary vide his letter dated August 2018 without any change for being appointed in terms of provisions of Para 7.10 of the L.R. Manual. The State Government, vide its order dated 24.11.2018, selected 14 counsels out of the list of 19 counsels as sent by the District Magistrate, Ballia for being appointed on the post of D.G.C., A.D.G.C. and Assistant D.G.C. under the provisions of para 7.10 of L.R. Manual. It is these appointments that are under challenge in this writ petition.

After entertaining the writ petition we had called for instructions from the Standing Counsel and also the records pertaining to the appointments as recommended by the State Government only to verify and peruse the decision making process by which the said appointments were made ignoring the recommendations made by the Committee constituted by the District Judge, Ballia.

Sri Neeraj Tripathi, learned Additional Advocate General, appeared and assisted the Court and forwarded the records pertaining to the manner of appointment. He also brought on record the instructions received through the District Magistrate, Ballia in respect of the averments made in the writ petition. We have taken the said instructions on record and perused the original record in details. The averments made in the writ petition with regard to the recommendations made by the Committee constituted by the District Judge of the 51 candidates and the subsequent forwarding all the said 51 names by the District Judge to the State Government are not in dispute.

From perusal of documents on record as well as the instructions, it

is revealed that on 23.8.2018 Sri Brajesh Pathak, Minister for Justice, Political Pension and Additional Power Source, vide letter No. 2064, addressed to the Chief Secretary (Justice), the Hon'ble Minister directed the Chief Secretary that with regard to the appointment of Government Counsels on various posts in the District Ballia, the names of the under written counsels be called for from the District Magistrate along with his proposal. In the said letter, the name of 19 counsels was recorded along with their mobile numbers, a copy of the said letter is extracted here-in-below:

संख्या एम 253/सत्र न्याय0-3/2018

ब्रजेश पाठक	कार्यालय: कक्ष सं0-91-91ए मुख्य भवन
मंत्री	उ0प्र0 सचिवालय
विधायी एवं न्याय,	दूरभाष: 0522-2238074 / 2213292(का0)
राजनैतिक पेंशन	संख्या 2064/वी.आई.पी./वि.न्या.अति.ऊर्जा रा.पें./2018
अतिरिक्त ऊर्जा स्रोत	लखनऊ
	दिनांक 23.08.18

प्रमुख सचिव, न्याय।

कृपया जनपद **बलिया** में शासकीय अधिवक्ताओं के विभिन्न पदों पर रिक्तियों के सापेक्ष निम्नलिखित अधिवक्ताओं को 14-14 दिन के लिए अस्थायी रूप से आबद्ध करने हेतु जिलाधिकारी से तत्काल प्रस्ताव प्राप्त कर अग्रेतर कार्यवाही हेतु प्रस्तुत करें:-

1. श्री संजीव कुमार सिंह पुत्र श्री केदारनाथ सिंह (मो0-9452350752), जि0शा0अधि0, फौजदारी।
2. श्री विनय कुमार सिंह, पुत्र श्री आनन्देश्वर प्रताप सिंह (मो0-9450780590), जि0शा0अधि0, सिविल।
3. श्री सम्पूर्णानन्द दूबे, पुत्र श्री हरिशंकर दूबे (मो0-9453776085), जि0शा0अधि0, राजस्व।
4. श्री सुधीर कुमार मिश्रा, पुत्र श्री शोकहरण मिश्रा (मो0-9450780029), सहा0 जि0शा0अधि0, फौजदारी।
5. श्री अनिल पाण्डेय, पुत्र श्री केदार नाथ पाण्डेय (मो0-8115779009), सहा0

जि०शा०अधि०,फौजदारी।

6. श्री संदीप कुमार तिवारी पुत्र श्री वीरेन्द्र तिवारी (मो०-9415659131), सहा० जि०शा०अधि०,फौजदारी।
7. श्री विनय कुमार सिंह पुत्र श्री कृष्ण नन्द सिंह (मो०-9839463730), सहा० जि०शा०अधि०,फौजदारी।
8. श्री हर्ष नारायण प्रसाद पुत्र स्व० शुकर प्रसाद (मो०-9454540908), सहा० जि०शा०अधि०,फौजदारी।
9. श्री नरदेश्वर मिश्र पुत्र श्री सच्चिदानन्द मिश्र (मो०-9670360037), सहा० जि०शा०अधि०,फौजदारी।
10. श्री संदीप कुमार गुप्ता पुत्र श्री अवध बिहारी प्रसाद (मो०-9936607367), सहा० जि०शा०अधि०,फौजदारी।
11. श्री अजय कुमार राय पुत्र श्री स्वामीनाथ राय (मो०-9452099958), सहा० जि०शा०अधि०,फौजदारी।
12. श्री विजय शंकर पाण्डेय पुत्र श्री बाल कृष्ण पाण्डेय (मो०-9450532255), सहा० जि०शा०अधि०,फौजदारी।
13. श्री विपिन कुमार मिश्र पुत्र स्वा० बालेश्वर मिश्र (मो०-9450776561), सहा० जि०शा०अधि०,फौजदारी।
14. श्री विनोद कुमार भारद्वाज पुत्र स्व० मनोगी (मो०-9415829955), सहा० जि०शा०अधि०,फौजदारी।
15. श्री मनोज पाण्डेय पुत्र श्री राम विलास पाण्डेय (मो०-9415694789), सहा० जि०शा०अधि०,सिविल।
16. श्री कुंज बिहारी गुप्ता पुत्र स्व० राजेन्द्र प्रसाद गुप्ता(मो०-9452866203), सहा० जि०शा०अधि०,सिविल।
17. श्री दीप नारायण ठाकुर पुत्र स्व० जगन्नाथ ठाकुर (मो०-9415361851), सहा० जि०शा०अधि०,सिविल।
18. श्री बृज नारायण राय पुत्र श्री ठाकुर राय (मो०-9415657598), सहा० जि०शा०अधि०, राजस्व।
19. श्री मुरली यादव पुत्र स्व० हरिनन्दन यादव (मो०-9415249940), सहा० जि०शा०अधि०,राजस्व।

कृपया उपरोक्तानुसार तत्काल कार्यवाही करने का कष्ट करें।

21.08.2018

(ब्रजेश पाठक)

मंत्री

विधायी एवं न्याय अतिरिक्त ऊर्जा स्रोत
राजनैतिक पेंशन विभाग उत्तर प्रदेश शासन।

In pursuance of the said direction by the Hon'ble Minister, the Under Secretary, vide his letter dated 21.8.2018, wrote a letter to the District Magistrate, Ballia directing him to send a proposal for appointment of 19 persons as were recommended by the Minister for being appointed on 14 days basis. The said letter was in sum and substance the same as the letter dated 23.8.2018. Copy of the said letter is being extracted here-in-below:

संख्या-एम-252 / सात-न्याय-3-18

प्रेषक,

ओम प्रकाश

अनु सचिव,

उत्तर प्रदेश शासन।

सेवा में,

जिलाधिकारी,

बलिया।

न्याय अनुभाग-3(नियुक्तियाँ)

लखनऊ: दिनांक 31 अगस्त, 2018

विषय:- जनपद बलिया में रिक्त शासकीय अधिवक्ताओं के विभिन्न पदों पर 14-14 दिन के आबन्धन के संबंध में।

महोदय,

उपर्युक्त विषय के संबंध में मुझे यह कहने का निदेश हुआ है कि जनपद बलिया में शासकीय अधिवक्ताओं के विभिन्न रिक्त पदों के सापेक्ष विधि परामर्शी निदेशिका के सुसंगत प्राविधानों के अनुसार 14-14 दिन हेतु अस्थायी रूप से आबद्ध किये जाने के संबंध में नियमानुसार प्रस्ताव उपलब्ध कराने का कष्ट करे:-

1. श्री संजीव कुमार सिंह पुत्र श्री केदारनाथ सिंह (मो0-9452350752), जि0शा0अधि0, फौजदारी।

2. श्री विनय कुमार सिंह, पुत्र श्री आनन्देश्वर प्रताप सिंह (मो0-9450780590), जि0शा0अधि0, सिविल ।
3. श्री सम्पूर्णानन्द दूबे, पुत्र श्री हरिशंकर दूबे (मो0-9453776085), जि0शा0अधि0, राजस्व ।
4. श्री सुधीर कुमार मिश्रा, पुत्र श्री शोकहरण मिश्र (मो0-9450780029), सहा0 जि0शा0अधि0, फौजदारी ।
5. श्री अनिल पाण्डेय, पुत्र श्री केदार नाथ पाण्डेय (मो0-8115779009), सहा0 जि0शा0अधि0, फौजदारी ।
6. श्री संदीप कुमार तिवारी पुत्र श्री वीरेन्द्र तिवारी (मो0-9415659131), सहा0 जि0शा0अधि0, फौजदारी ।
7. श्री विनय कुमार सिंह पुत्र श्री कृष्ण नन्द सिंह (मो0-9839463730), सहा0 जि0शा0अधि0, फौजदारी ।
8. श्री हर्ष नारायण प्रसाद पुत्र स्व0 शुकर प्रसाद (मो0-9454540908), सहा0 जि0शा0अधि0, फौजदारी ।
9. श्री नरदेश्वर मिश्र पुत्र श्री सच्चिदानन्द मिश्र (मो0-9670360037), सहा0 जि0शा0अधि0, फौजदारी ।
10. श्री संदीप कुमार गुप्ता पुत्र श्री अवध बिहारी प्रसाद (मो0-9936607367), सहा0 जि0शा0अधि0, फौजदारी ।
11. श्री अजय कुमार राय पुत्र श्री स्वामीनाथ राय (मो0-9452099958), सहा0 जि0शा0अधि0, फौजदारी ।
12. श्री विजय शंकर पाण्डेय पुत्र श्री बाल कृष्ण पाण्डेय (मो0-9450532255), सहा0 जि0शा0अधि0, फौजदारी ।
13. श्री विपिन कुमार मिश्र पुत्र स्वा0 बालेश्वर मिश्र (मो0-9450776561), सहा0 जि0शा0अधि0, फौजदारी ।
14. श्री विनोद कुमार भारद्वाज पुत्र स्व0 मनोगी (मो0-9415829955), सहा0 जि0शा0अधि0, फौजदारी ।
15. श्री मनोज पाण्डेय पुत्र श्री राम विलास पाण्डेय (मो0-9415694789), सहा0 जि0शा0अधि0, सिविल ।
16. श्री कुंज बिहारी गुप्ता पुत्र स्व0 राजेन्द्र प्रसाद गुप्ता (मो0-9452866203), सहा0 जि0शा0अधि0, सिविल ।
17. श्री दीप नारायण ठाकुर पुत्र स्व0 जगन्नाथ ठाकुर (मो0-9415361851), सहा0

जि०शा०अधि०,सिविल।

18. श्री बृज नारायण राय पुत्र श्री ठाकुर राय (मो०-9415657598), सहा० जि०शा०अधि०, राजस्व।
19. श्री मुरली यादव पुत्र स्व० हरिनन्दन यादव (मो०-9415249940), सहा० जि०शा०अधि०,राजस्व।

भवदीय

ह० अपठनीय

(ओम प्रकाश)

अनु सचिव।

In pursuance of these two directives the District Magistrate, Ballia recommended the names of the persons as directed by the Under Secretary for being appointed. The said recommendation was made by the District Magistrate on 16.9.2018 which is extracted here-in-below:

संख्या-डी-1374 / सात-न्याय-3-18

प्रेषक,

जिला मजिस्ट्रेट

बलिया।

सेवा में,

विशेष सचिव,

उत्तर प्रदेश शासन

न्याय अनुभाग (नियुक्तियों)

लखनऊ।

संख्या: 699 / न्याय सहा०

विषय:-जनपद बलिया में रिक्त शासकीय अधिवक्ताओं के विभिन्न पदों पर 14-14 दिन के आबंधन के संबंध में।

महोदय,

कृपया, उपर्युक्त विषयक शासन के पत्र संख्या-एम-253 / सात-न्याय-3-18 दिनांक 21.08.2018 का सन्दर्भ ग्रहण करने का कष्ट करें, जिसके द्वारा जनपद बलिया में शासकीय अधिवक्ताओं के विभिन्न रिक्त पदों के सापेक्ष विधि परामर्शी निदेशिका के सुसंगत प्राविधानों के

अनुसार 14-14 दिनों हेतु अस्थाई रूप से आबद्ध किये जाने के सम्बन्ध में नियमानुसार प्रस्ताव उपलब्ध कराने का निर्देश दिया गया है।

2- शासन के पत्र में कुल 19 शासकीय अधिवक्ताओं के नाम के सम्मुख पदनाम भी अंकित हैं, का उल्लेख है, जिसके क्रम में पत्रांकित अधिवक्तागण द्वारा 14-14 दिनों के अस्थायी आबन्धन के लिए आवेदन पत्र प्रस्तुत किया गया है, जो निम्नवत है:-

क्रम संख्या	अधिवक्ता का नाम	पदनाम
1	श्री संजीव कुमार सिंह, पुत्र-श्री केदारनाथ सिंह ग्राम व पोस्ट-शाहपुर थाना गडवार जनपद बलिया। मो0नं0-9452350752	जिला शासकीय अधिवक्ता (फौजदारी)
2	श्री अनिल पाण्डेय पुत्र-श्री केदारनाथ पाण्डेय, पता-ग्राम व पोस्ट-रेवती जनपद बलिया। मो0नं0- 81155779009	अपर जिला शासकीय अधिवक्ता (फौजदारी)
3	श्री सुधीर कुमार मिश्र पुत्र-श्री शोकहरण मिश्र, पता-ग्राम-सुहवल पोस्ट-कुसौरा थाना बांसडीह रोड जनपद बलिया। मो0नं0 9450780029	सहायक जिला शासकीय अधिवक्ता (फौजदारी)
3(1)	श्री संदीप कुमार तिवारी पुत्र-श्री वीरेन्द्र तिवारी, ग्राम व पोस्ट-चितबड़ागांव थाना चितबड़ागांव जनपद बलिया। मो0 नं0 8353985535 / 9415659131	सहायक जिला शासकीय अधिवक्ता (फौजदारी)
3(2)	श्री विनय कुमार सिंह, पुत्र-श्री कृष्णानन्द सिंह, ग्राम व पोस्ट-रामनगर थाना दोकटी जनपद बलिया। मो0नं0-9839463730	सहायक जिला शासकीय अधिवक्ता (फौजदारी)
3(3)	श्री हर्षनारायण प्रसाद, पुत्र-स्व0 शूकर प्रसाद, ग्राम-चडवां बरवां थाना सिकन्दरपुर जनपद बलिया। मो0नं0-9454540908	सहायक जिला शासकीय अधिवक्ता (फौजदारी)
3(4)	श्री नर्देश्वर मिश्र, पुत्र-श्री सच्चिदानन्द मिश्र ग्राम व पोस्ट- जगदेवा थाना बैरिया जनपद बलिया। मो0नं0-9670360037	सहायक जिला शासकीय अधिवक्ता (फौजदारी)
3(5)	श्री संदीप कुमार गुप्ता पुत्र-अवध बिहारी प्रसाद	सहायक जिला शासकीय अधिवक्ता (फौजदारी)

	ग्राम-सहतवार तह0 बांसडीह जनपद बलिया।मो0नं0 9936607367	
3(6)	श्री अजय कुमार राय पुत्र श्री स्वामीनाथ राय, ग्राम-आनन्द नगर तहसील बलिया जनपद बलिया। मो0नं0- 9452099958	सहायक जिला शासकीय अधिवक्ता (फौजदारी)
3(7)	श्री विजयशंकर पाण्डेय, पुत्र-श्री बालकृष्ण पाण्डेय ग्राम-नन्दपुर पोस्ट-हल्दी जनपद बलियां मो0नं0- 9450532255।	सहायक जिला शासकीय अधिवक्ता (फौजदारी)
3(8)	श्री विपिन कुमार मिश्र, पुत्र-स्व0 बालेश्वर मिश्र ग्राम-पाण्डेयपुर पोस्ट-ताखा (गढमलपुर) तह0 रसड़ा जनपद बलिया। मो0नं0 9450776561	सहायक जिला शासकीय अधिवक्ता (फौजदारी)
3(9)	श्री विनोद कुमार भारद्वाज पुत्र-स्व0 मनोगी ग्राम-गौरीताल घोसा पोस्ट-सोनडीह जनपद बलिया। मो0नं0 9415829955	सहायक जिला शासकीय अधिवक्ता (फौजदारी)
4	श्री विनय कुमार सिंह पुत्र-आनन्देश्वर प्रताप सिंह, ग्राम-जानकी निवास बहादुरपुर देवकली बलिया। मो0नं0 9450780590	जिला शासकीय अधिवक्ता (दीवानी)
5	श्री मनोज पाण्डेय पुत्र-श्री रामविलास पाण्डेय, ग्राम-नसीराबाद पोस्ट-सागरपाली जनपद बलिया। मो0नं0 9415694789	अपर जिला शासकीय अधिवक्ता (दीवानी)
6	श्री कुंजबिहारी गुप्ता पुत्र-स्व0 राजेन्द्र प्रसाद गुप्ता, ग्राम- मैरीटार तह0-बांसडीह जनपद बलिया। मो0नं0 9452866203	सहायक जिला शासकीय अधिवक्ता (दीवानी)
	श्री दीपनारायण ठाकुर पुत्र-स्व0 जन्नाथ ठाकुर ग्राम- कोतवाली हरपुर बलिया। मो0नं0- 9415361851	सहायक जिला शासकीय अधिवक्ता (दीवानी)
7	श्री सम्पूर्णानन्द दूबे पुत्र- स्व0 हरिशंकर दूबे, ग्राम व पोस्ट-बेरुआरबारी तह0- बांसडीह जनपद बलिया। मो0 नं0 9453776085	जिला शासकीय अधिवक्ता (राजस्व)

8	श्री ब्रजनारायण राय, पुत्र—श्री ठाकुर राय ग्राम— व पोस्ट—जीराबस्ती सुखपुरा बलिया। मो0नं0— 9415657598	सहायक जिला शासकीय अधिवक्ता (राजस्व)
	श्री मुरली यादव पुत्र—स्व0 हरिनन्दर यादव ग्राम—मालीपुर पोस्ट—गौवापार जनपद बलिया। मो0नं0— 9792433975	सहायक जिला शासकीय अधिवक्ता (राजस्व)
9	-----	अपर जिला शासकीय अधिवक्ता (राजस्व)
	कुल विज्ञापित रिक्त पदों की संख्या	18

विज्ञापित रिक्त पदों का विवरण निम्नानुसार है:—

व संख्या	पद का नाम	संख्या
1	जिला शासकीय अधिवक्ता (फौजदारी)	1
2	अपर जिला शासकीय अधिवक्ता (फौजदारी)	1
3	सहायक जिला शासकीय अधिवक्ता (फौजदारी)	8
4	जिला शासकीय अधिवक्ता (दीवानी)	1
5	अपर जिला शासकीय अधिवक्ता (दीवानी)	1
6	सहायक जिला शासकीय अधिवक्ता (दीवानी)	2
7	जिला शासकीय अधिवक्ता (राजस्व)	1
8	सहायक जिला शासकीय अधिवक्ता (राजस्व)	2
9	अपर जिला शासकीय अधिवक्ता (राजस्व)	1
	कुल विज्ञापित रिक्त पदों की संख्या	18

सहायक जिला शासकीय अधिवक्ता फौजदारी के मात्र 8 पद रिक्त हैं, जिसके सापेक्ष 10 व्यक्तियों का नाम शासन से प्राप्त हुआ है। इस प्रकार 2 नाम अतिरिक्त हो रहे हैं। अपर जिला शासकीय अधिवक्ता राजस्व के पद पर श्री हंसराज तिवारी वैकल्पिक व्यवस्था में आबद्ध

होकर कार्य कर रहे हैं। शासन द्वारा दिनांक 27.10.2017 को पूर्व से कार्यरत शासकीय अधिवक्तागण का नवीनीकरण न करते हुए आबद्धता समाप्त किये जाने के फलस्वरूप इनके द्वारा अस्थायी एवं वैकल्पिक रूप में दीवानी न्यायालयों में शासकीय हित में वादों की पैरबी हेतु सम्बद्ध किया गया है।

यह भी उल्लेखनीय है कि वर्तमान समय में सत्र न्यायालयों में शासन द्वारा आबद्ध श्री भरत तिवारी एवं देव नारायण पाण्डेय अपर जिला शासकीय अधिवक्ता (फौजदारी) एवं अभियोजन अधिकारीगण को शासकीय हित में वादों की पैरबी हेतु सम्बद्ध किया गया है।

शासन के निर्देश के क्रम में जनपद में शासकीय अधिवक्ताओं के रिक्त पदों पर आबन्धन हेतु विज्ञापित प्रकाशित करके प्राप्त आवेदन पत्रों पर मा0 जनपद न्यायाधीश बलिया द्वारा संस्तुत पैनल पुलिस विभाग से चरित्र सत्यापन कराकर शासन को प्रेषित किया गया है। जिस पर कतिपय बिन्दुओं पर आख्या वांछित है, जिसे पृथक से भेजा जायेगा।

उपरोक्त अधिवक्तागण जिनका नाम शासन से प्राप्त हुआ है, उनके कार्य अनुभव, व्यवसायिक आचरण, गुणावगुण के सम्बन्ध में न तो मा0 जनपद न्यायाधीश की कोई आख्या/संस्तुति प्राप्त है और न ही पुलिस विभाग से उनका चरित्र सत्यापन ही हुआ है।

अतएव उपरोक्त के दृष्टिगत शासकीय हित में वादों की पैरबी हेतु मेरा सुविचारित मत है कि शासन को भेजे गये पैनल जो मा0 जनपद न्यायाधीश बलिया द्वारा संस्तुत है, में से ही विधि परामर्शी निदेशिका के अध्याय 07 के प्रस्तर 7.10 के प्राविधानों के अन्तर्गत 14-14 दिनों के लिए अस्थायी वैकल्पिक व्यवस्था में शासकीय अधिवक्तागण के रिक्त पदों पर आबन्धन हेतु निर्णय लेने का कष्ट करें।

संलग्नक उपरोक्तानुसार।

भवदीय

ह0 अपठनीय

(भवानी सिंह खंगारौत)

जिला मजिस्ट्रेट

बलिया।

संख्या व तिथि उपरोक्त।

प्रतिलिपि: अनु सचिव, उत्तर प्रदेश शासन, न्याय अनुभाग-3 (नियुक्तियों), लखनऊ को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित। ह0 अपठनीय

(भवानी सिंह खंगारौत)

जिला मजिस्ट्रेट

बलिया।

In pursuance of the said recommendation, the Under Secretary sent a letter to the District Magistrate conveying that the proposal for appointment as sent for 19 names has been considered and the following 14 names, out of the said 19 names recommended, are being sent for appointment to the various posts for a period of 14 days under Para 7.10 of the L.R. Manual, a copy of the said dated 29.11.2018 is extracted here-in-below:

संख्या-डी0-1374 / सात-न्याय-3-18-48 (बलिया) / 2014

प्रेषक,

अजीत सिंह राठौर,

अनु सचिव,

उत्तर प्रदेश शासन।

सेवा में,

जिलाधिकारी,

बलिया।

न्याय अनुभाग-3 (नियुक्तियों)

लखनऊ : दिनांक 29 नवम्बर, 2018

विषय:- जनपद बलिया में रिक्त शासकीय अधिवक्ताओं के विभिन्न पदों पर 14-14 दिनों के आबन्धन किये जाने के संबंध में।

महोदय,

उपर्युक्त विषयक अपने पत्र संख्या-699/न्याय सहा0 दिनांक 16.09.2018 का कृपया संदर्भ ग्रहण करने का कष्ट करें।

2. उक्त के सन्दर्भ में मुझे यह कहने का निदेश हुआ है कि विधि परामर्शी निदेशिका के प्रस्तर-7.10 के प्राविधानों के अन्तर्गत रिक्त पदों के सापेक्ष अस्थायी रूप से 14-14 दिनों के लिये आबद्ध किये जाने के संबंध में आप द्वारा प्रेषित प्रस्ताव में निम्नलिखित अधिवक्ताओं के नामों पर अनुमोदन प्रदान किया जाता है:-

1. श्री संजीव कुमार सिंह पुत्र श्री केदारनाथ सिंह, जि0शा0अधि0, फौजदारी।
2. श्री अनिल पाण्डेय पुत्र श्री केदारनाथ सिंह, अपर जि0शा0अधि0, फौजदारी।
3. श्री सुधीर कुमार मिश्र पुत्र श्री शोकहरण मिश्र, सहा0 जि0शा0अधि0, फौजदारी।
4. श्री संदीप कुमार तिवारी पुत्र श्री वीरेन्द्र तिवारी, सहा0 जि0शा0अधि0, फौजदारी।

5. श्री विनय कुमार सिंह पुत्र कृष्णानन्द सिंह, सहा0 जि0शा0अधि0, फौजदारी।
6. श्री नर्देश्वर मिश्र पुत्र श्री सच्चिदानन्द मिश्र, सहा0 जि0शा0अधि0, फौजदारी।
7. श्री विजयशंकर पाण्डेय पुत्र श्री बालकृष्ण पाण्डेय, सहा0 जि0शा0अधि0, फौजदारी।
8. श्री विनोद कुमार भारद्वाज पुत्र श्री स्व0 मनोगी, सहा0 जि0शा0अधि0, फौजदारी।
9. श्री विनय कुमार सिंह पुत्र श्री आनन्देश्वर प्रताप सिंह, जि0शा0अधि0, दीवानी।
10. श्री मनोज पाण्डेय पुत्र श्री रामविलास पाण्डेय, अपर जि0शा0अधि0, दीवानी।
11. श्री दीपनारायण ठाकुर पुत्र स्व0 जगन्नाथ ठाकुर, सहा0 जि0शा0अधि0, दीवानी।
12. श्री सम्पूर्णानन्द दूबे पुत्र स्व0 हरिशंकर दुबे, जि0शा0अधि0, राजस्व।
13. श्री ब्रजरानायण राय पुत्र श्री ठाकुर राय, सहा0 जि0शा0अधि0, राजस्व।
14. श्री मुरली यादव पुत्र स्व0 हरिनन्दन यादव, सहा0 जि0शा0अधि0, राजस्व।

अतः कृपया उक्त प्राविधानों के अन्तर्गत आवश्यक कार्यवाही करने का कष्ट करें।

भवदीय,

(अजीत सिंह राठौर)

अनु सचिव।

Sri Neeraj Tripathi, learned Additional Advocate General, has brought on record a letter dated 03.08.2018, sent by the Under Secretary to the District Magistrate, stating that the earlier recommendation of the District Magistrate pertaining to 51 names shortlisted and sent, did not observe certain provisions of the L.R. Manual, as such, the said panel was being sent back for being considered and sent afresh after considering certain points as mentioned in the said letter dated 03.08.2018. Contents of the said letter dated 03.8.2018 are extracted herein-in-below:

संख्या-डी0-999/सात-न्याय-3-18-48 (बलिया)/2014

प्रेषक,

ओम प्रकाश,
अनु सचिव,
उत्तर प्रदेश शासन।

सेवा में,

जिलाधिकारी,
बलिया।

न्याय अनुभाग-3 (नियुक्तियाँ)**लखनऊ : दिनांक 3 अगस्त, 2018**

विषय:—जनपद बलिया में जिला/अपर/सहायक, शासकीय अधिवक्ता (दीवानी/फौजदारी/राजस्व) के रिक्त पदों के सापेक्ष नियुक्ति हेतु पैनल/प्रस्ताव उपलब्ध कराये जाने के संबंध में।

महोदय,

उपर्युक्त विषयक अपने पत्र संख्या-543,544,545/न्याय सहा0 दिनांक 10.06.2018, तथा विभिन्न पत्र संख्या-7510,7511,7512,7513,7514/न्याय सहा0 दिनांक 10.07.2018, का संदर्भ ग्रहण करने का कष्ट करें।

2. इस सम्बन्ध में मुझे यह कहने का निदेश हुआ है कि जिला/अपर/सहायक, शासकीय अधिवक्ता (दीवानी/फौजदारी/राजस्व) के रिक्त पदों के सापेक्ष उपलब्ध कराये गये पैनल के संबंध में विधि परामर्शी निदेशिका के कतिपय प्राविधानों का अनुपालन नहीं किया गया है। अतः उक्त पैनल इस आशय से संलग्न कर वापस किये जाते हैं कि कृपया विधि परामर्शी निदेशिका के प्रस्तर संख्या-7 के प्राविधानों के अनुसार निम्नलिखित बिन्दुओं को सम्मिलित करते हुए पुनः पैनल गठित कर शासन को उपलब्ध कराने का कष्ट करें:-

1. संबंधित जिलाधिकारी विधिज्ञ वर्ग संस्था (बार) के सदस्यों को रिक्तियों के बारे में सूचित करेगा।
2. जिला सरकारी अधिवक्ता की दशा में 10 वर्ष विधि व्यवसाय किया हो।
3. सहायक जिला शासकीय अधिवक्ता की दशा में 07 वर्ष विधि व्यवसाय किया हो।
4. उप जिला शासकीय अधिवक्ता की दशा में 05 वर्ष विधि व्यवसाय किया हो।
5. आयु, विधिक विशेष ज्ञान, (बार) में किये गये विधि व्यवसाय की अवधि।
6. हिन्दी में प्राप्त योग्यताएं।
7. पिछले तीन वर्षों विधि व्यवसाय की आय का विवरण।
8. दो वर्षों की कार्यवाही के दौरान उनके द्वारा किये गये कार्य का न्यायालय द्वारा सत्यापित आपराधिक, सिविल और राजस्व संबंधी विधि कार्य किया है।
9. पैनल में तीन विधि व्यवसायियों के नाम होने चाहिए।
10. चरित्र, व्यवसायिक आचरण, उसकी अपयुक्तता, गुणावगुण तथा सत्यनिष्ठा के विषय में रिपोर्ट।
11. सिविल अपील सं0 13727/2015 स्टेट आफ यू0पी0 व अन्य बनाम अजय कुमार शर्मा आदि में मा0 उच्चतम न्यायालय द्वारा पारित आदेश दिनांक 26.11.2015 तथा यूनियन आफ इण्डिया बनाम रघुवीर सिंह (1989) 2 एस0एस0सी0 754 में पारित निर्णय के

आलोक में पैनल भेजा जाना चाहिए।

संलग्नक यथोक्त

भवदीय,

(ओम प्रकाश)

अनु सचिव।

In the instructions, sent by the District Magistrate, which are taken on record, he has reiterated that the Government had raised certain objections with regard to the list of 51 candidates sent through the letter dated 03.08.2018 and, in fact, it further goes to show that in response to the letter dated 03.08.2018, a report was sent on 12.10.2018 in accordance with Para 7 of the L.R. Manual and after approval of the learned District Judge, Ballia, it is also stated that format of the application as per Para 7 of the L.R. Manual and guidelines, issued by the Hon'ble Apex Court in Civil Appeal No. 13727 of 2015 issued vide order dated 26.11.2015 and the guidelines issued in Raghuvir Singh's case, the said letter dated 12.12.2018 is also placed on record through instructions. A perusal whereof reveals that all the points, which were raised in the letter dated 03.08.2018, were clarified by the District Magistrate, Ballia in his said communication dated 12.10.2018. There is nothing on record that any further orders were passed thereafter in respect of the list of 51 candidates.

Based upon the said facts, as narrated above, and, as pleaded by both the parties and as borne by the original records. learned counsel for the petitioner proceeded to argue that appointments made through letter dated 29.11.2018 were wholly arbitrary, illegal and contrary to the provisions of Chapter VII of the L.R. Manual. It is argued that the manner of appointment smacks of non-application of mind and is arbitrary. He has further argued that although no person has right to be appointed as a Government Counsel, however, any appointment made *de hors* the rules and the provisions of the L.R. Manual as well as the pronouncement of the Hon'ble Supreme Court deserves to be set aside. He has further argued

that even if the Government was not agreeable to the 51 names sent by the District Magistrate on the basis of recommendation of the Committee constituted by the District Judge, the Government could have appointed the counsels on a short-term basis only in terms of Para 7.10 of the L.R. Manual out of the panel lawyers that existed and the appointments could not be done of the persons who were never on the panel and had never undergone any procedure whatsoever for selection and thus the appointments made by the State Government deserves to be quashed. The petitioner has argued that appointments of the District Government Counsel in the state of Uttar Pradesh are governed by the L.R. manual as well as under the provisions of Section 24 of Cr.P.C. (in relation to the Public Prosecutors and the Additional Prosecutors, Criminal). He has extensively argued that in terms of the power conferred either under Section 24 Cr.P.C. or the L.R. Manual, the Under Secretary was not empowered to send the names as has been done by the Under Secretary as he has no authority whatsoever to appoint or even recommend for appointments, the names as has been done by the Under Secretary in the present case. It is argued at the bar that the appointments are made on considerations beyond what is prescribed under the L.R. Manual and for oblique motives and are politically motivated.

Sri Neeraj Tripathi, on the other hand, has argued that the process of finalizing the appointments in terms of the advertisements dated 08.12.2017 is in process and the present appointments are only as stop gap arrangement till the final selection is over. He has heavily relied upon the letter dated 23.8.2018 to suggest that the names as recommended by the District Magistrate and the Committee constituted by the District Judge, Ballia were objected to which establishes that the process of selection did not come to an end and owing to government exigencies it was necessary that stop gap arrangements be made so the work of the Government does not suffer and, thus, it is prayed that the writ petition is devoid of merits and is liable to be dismissed.

Learned counsel for the petitioner has placed heavy reliance on the judgement in the case of **State of U.P. and others vs. Ajay Kumar Sharma and another**, (2016) 15 SCC 289, the judgement in the case of **State of U.P. and another vs. Johri Mal**, (2004) 4 SCC 714 and **State of Punjab and another vs. Brijeshwar Singh Chahal and another**, 2016 (6) SCC 1, **Kumari Shrilekha Vidyarthi Etc. vs. State of U.P. And Ors**, 1991 1 SCC 212. To buttress his case that the appointments made are contrary to the L.R. Manual, Section 24 Cr.P.C and the law laid down by the Hon'ble Supreme Court in the judgements relied upon by the counsel for the petitioner.

On the basis of the pleadings, exchanged, perusal of records and the submissions made at the bar, the points that emerge for consideration are whether the manner of appointment of the 14 persons, impugned in the present writ petition are in accordance with law applicable for appointment to the post of D.G.C., Additional D.G.C. and Assistant D.G.C. and whether the appointments so made can meet the test of Article 14 of the Constitution of India.

We have given our anxious consideration to the facts pleaded and brought on record at the bar as well as the judgements relied upon by the parties. In the case of **State of U.P. and another vs. Johri Mal**, the Hon'ble Supreme Court considered the renewal of the term of D.G.C. (Criminal) after analysing the statutory provisions of section 24 Cr.P.C. as well as the provisions of L.R. Manual concerning the appointments of the District Government Counsels in the State of U.P. and the scope of judicial review with regard to the appointments made by the State Government in terms of the powers conferred under Section 24 Cr.P.C. as well as the L.R. Manual. In para 28, 30, 40, 42, 43, 44, 45 and 56 has observed with regard to scope of judicial are as under:

“28. The Scope and extent of power of the judicial review of the High Court contained in Article 226 of the Constitution of India would vary from case to case, the nature of the order, the relevant statute as also the other relevant factors including the

nature of power exercised by the public authorities, namely, whether the power is statutory, quasi judicial or administrative. The power of judicial review is not intended to assume a supervisory role or done the robes of omnipresent. The power is not intended either to review governance under the rule of law nor do the courts step into the areas exclusively reserved by the *suprema lex* to the other organs of the State. Decisions and actions which do not have adjudicative disposition may not strictly fall for consideration before a judicial review court. The limited scope of judicial review succinctly put are :

(i) Courts, while exercising the power of judicial review, do not sit in appeal over the decisions of administrative bodies;

(ii) A petition for a judicial review would lie only on certain well-defined grounds.

(iii) An order passed by an administrative authority exercising discretion vested in it, cannot be interfered in judicial review unless it is shown that exercise of discretion itself is perverse or illegal.

(iv) A mere wrong decision without anything more is not enough to attract the power of judicial review; the supervisory jurisdiction conferred on a Court is limited to seeing that Tribunal functions within the limits of its authority and that its decisions do not occasion miscarriage of justice.

(v) The Courts cannot be called upon to undertake the Government duties and functions. The Court shall not ordinarily interfere with a policy decision of the State. Social and economic belief of a Judge should not be invoked as a substitute for the judgment of the legislative bodies.

30. It is well-settled that while exercising the power of judicial review the Court is more concerned with the decision making process than the merit of the decision itself. In doing so, it is often argued by the defender of an impugned decision that the Court is not competent to exercise its power when there are serious disputed questions of facts; when the decision of the Tribunal or the decision of the fact finding body or the arbitrator is given finality by the statute which governs a given situation or which, by nature of the activity the decision maker's opinion on facts is final. But while examining and scrutinizing the decision making process it becomes inevitable to also appreciate the facts of a given case as otherwise the decision cannot be tested under the grounds of illegality, irrationality or procedural impropriety. How far the court of judicial review can reappraise the findings of facts depends on the ground of judicial review. For example, if a decision is challenged as irrational, it would be well-nigh impossible to

record a finding whether a decision is rational or irrational without first evaluating the facts of the case and coming to a plausible conclusion and then testing the decision of the authority on the touch-stone of the tests laid down by the Court with special reference to a given case. This position is well settled in Indian administrative law. Therefore, to a limited extent of scrutinizing the decision making process, it is always open to the Court to review the evaluation of facts by the decision maker.

40. So long as in appointing a counsel the procedures laid down under the Code of Criminal Procedure are followed and a reasonable or fair procedure is adopted, the Court will normally not interfere with the decision. The nature of the office held by a lawyer vis-à-vis the State being in the nature of professional engagements, the courts are normally chary to over-turn any decision unless an exceptional case is made out. The question as to whether the State is satisfied with the performance of its counsel or not is primarily a matter between it and the counsel. The Code of Criminal Procedure does not speak of renewal or extension of tenure. The extension of tenure of public prosecutor or the district counsel should not be compared with the right of renewal under a licence or permit granted under a statute. The incumbent has no legal enforceable right as such. The action of the State in not renewing the tenure can be subjected to judicial scrutiny inter alia on the ground that the same is arbitrary. The courts normally would not delve into the records with a view to ascertain as to what impelled the State not to renew the tenure of a public prosecutor or a district counsel. The jurisdiction of the courts in a case of this nature would be to invoke the doctrine of 'Wednesbury Unreasonableness' as developed in *Associated Picture House vs. Wednesbury Corporation* (1947) 2 All ER 640).

42. It may be true that the Legal Remembrancer's Manual provides for renewal but it contains executive instructions which even do not meet the requirements of clause (3) of Article 166 of the Constitution. The Legal Remembrancer's Manual is not a law within the meaning of Article 13 of the Constitution of India.

43. The State, however, while appointing a counsel must take into account the following fundamental principles which are required to be observed that good and competent lawyers are required to be appointed for (i) good administration of justice; (ii) to fulfill its duty to uphold the rule of law; (iii) its accountability to the public; and (iv) expenditure from the tax payers' money.

44. Only when good and competent counsel are appointed by the State, the public interest would be safeguarded. The State while appointing the public prosecutors must bear in mind that

for the purpose of upholding the rule of law, good administration of justice is imperative which in turn would have a direct impact on sustenance of democracy. No appointment of public prosecutors or district counsel should, thus, be made either for pursuing a political purpose or for giving some undue advantage to a section of people. Retention of its counsel by the State must be weighed on the scale of public interest. The State should replace an efficient, honest and competent lawyer, inter alia, when it is in a position to appoint a more competent lawyer. In such an event, even a good performance by a lawyer may not be of much importance.

45. However, malice in law can also be a ground for judicial review.

56. We would, however, like to lay stress on the fact that the consultation with the District Judge must be an effective one. The District Judge in turn would be well advised to take his colleagues into confidence so that only meritorious and competent persons who can maintain the standard of public office can be found out.

The Supreme Court also extensively dealt with the nature of the office of the District Government Counsel in para 71 to 78 which is recorded as under:

“71. The District Government counsel appointed for conducting civil as also criminal cases hold offices of great importance. They are not only officers of the court but also the representative of the State. The court reposes a great deal of confidence in them. Their opinion in a matter carries great weight. They are supposed to render independent, fearless and non-partisan views before the court irrespective of the result of litigation which may ensue.

72. The Public Prosecutors have greater responsibility. They are required to perform statutory duties independently having regard to various provisions contained in the Code of Criminal Procedure and in particular Section 320 thereof.

73. The public prosecutors and the Government counsel play an important role in administration of justice. Efforts are required to be made to improve the management of prosecution in order to increase the certainty of conviction and punishment for most serious offenders and repeaters. The prosecutors should not be over-burdened with too many cases of widely varying degree of seriousness with too few assistants and inadequate financial resources. The prosecutors are required to play a significant role in the administration of justice by prosecuting only those who should be prosecuted and releasing or directing the use of non-punitive methods of

treatment of those whose cases would best be processed.

74. The District Government Counsel represent the State. They, thus, represent the interest of general public before a court of law. The Public prosecutors while presenting the prosecution case have a duty to see that innocent persons may not be convicted as well as an accused guilty of commission of crime does not go unpunished. Maintenance of law and order in the society and, thus, to some extent maintenance of rule of law which is the basic fibre for upholding the rule of democracy lies in their hands. The Government counsel, thus, must have character, competence, sufficient experience as also standing at the Bar. The need for employing meritorious and competent persons to keep the standard of the high offices cannot be minimized. The holders of the post have a public duty to perform. Public element is, thus, involved therein.

75. In the matter of engagement of a District Government Counsel, however, a concept of public office does not come into play. However, it is true that in the matter of Counsel, the choice is that of the Government and none can claim a right to be appointed. That must necessarily be so because it is a position of great trust and confidence. The provision of Article 14, however, will be attracted to a limited extent as the functionaries named in the Code of Criminal Procedure are public functionaries. They also have a public duty to perform. If the State fails to discharge its public duty or act in defiance, deviation and departure of the principles of law, the court may interfere. The court may also interfere when the legal policy laid down by the Government for the purpose of such appointments is departed from or mandatory provisions of law are not complied with. Judicial review can also be resorted to, if a holder of a public office is sought to be removed for reason *de hors* the statute.

76. The appointment in such a post must not be political one. The Manual states that a political activity by the District Government Counsel shall be a disqualification to hold the post.

77. We cannot but express our anguish over the fact that in certain cases recommendations are made by the District Magistrate having regard to the political affinity of the lawyers to the party in power. Those who do not have such political affinity although competent are not appointed. Legal Remembrancer's Manual clearly forbids appointment of such a lawyer and/or if appointed, removal from his office. The District Judge and the District Magistrate, therefore, are duty bound to see that before any recommendation is not made, or any political affinity. They must also bear in mind that the Manual postulates that any lawyer who is guilty of approaching the authorities would not be entitled to be considered for such appointment.

78. The State, therefore, is not expected to rescind the appointments with the change in the Government. The existing panel of the District Government Counsel may not be disturbed and a fresh panel come into being, only because a new party has taken over change of the Government.”

The Supreme Court also dealt with the question of manner of appointment and the consultation process that should be resorted to the findings as recorded in the said judgement in para 84 to 87 are as under:

“84. Keeping in mind the aforementioned legal principles the question which arises for consideration in these appeals is, the nature and extent of consultation, a Collector is required to make with the District Judge.

85. The age-old tradition on the part of the State in appointing the District Government Counsel on the basis of the recommendations of the District Collector in consultation with the District Judge is based on certain principles. Whereas the District Judge is supposed to know the merit, competence and capability of the concerned lawyers for discharging their duties; the District Magistrate is supposed to know their conduct outside the court vis-`-vis the victims of offences, public officers, witnesses etc. The District Magistrate is also supposed to know about the conduct of the Government counsel as also their integrity.

86. We are also pained to see that the Stat of Uttar Pradesh alone had amended sub-section (1) of Section 24 and deleted sub-sections (3), (4) and (5) of Section 24 of the Code of Criminal Procedure. Evidently, the said legislative step had been taken to overcome the decision of this Court in Kumari Shrilekha Vidyarthi (supra). We do not see any rationale in the said action. The learned counsel appearing for the State, when questioned, submitted that such a step had been taken having regard to the fact that exhaustive provisions are laid down in Legal Remembrancer Manual which is a complete code in itself. We see no force in the said submission as a law cannot be substituted by executive instructions which may be subjected to administrative vagaries. The executive instructions can be amended, altered or withdrawn at the whims and caprice of the executive for the party in power. Executive instructions, it is beyond any cavil, do not carry the same status as of a statute.

87. The State should bear in mind the dicta of this Court in Mundrika Prasad Singh (supra) as regard the necessity to consult the District Judge. While making appointments of District Government Counsel, therefore, the State should give primacy to the opinion of the District Judge. Such a course of action would demonstrate fairness and reasonableness of

action and, furthermore, to a large extent the action of the State would not be dubbed as politically motivated or otherwise arbitrary. As noticed hereinbefore, there also does not exist any rationale behind deletion of the provision relating to consultation with the High Court in the matter of appointment of the Public prosecutors in the High Court. The said provision being a salutary one, it is expected that the State of U.P. either would suitably amend the same or despite deletion shall consult the High Court with a view to ensure fairness in action.”

The next judgement relied upon by the counsel for the petitioner is **State of U.P. and others vs. Ajay Kumar Sharma and another**, the Hon'ble Supreme Court in the said case dealt with the renewal and the appointment of the District Government Counsel (civil and criminal) in the Subordinate Courts across the State of Uttar Pradesh. In the said case, it was extensively argued before the Supreme Court that the judgement in the case of **State of U.P. and another vs. Johri Mal** has categorically laid down that the post of District Counsel is a provisional appointment and no status of public nature is conferred on the incumbent and also that the L.R. Manual are merely instructions which do not contain the concomitants of Article 166(3) and, therefore, L.R. Manual is not a law under Article 13 of the Constitution of India.

The Supreme Court in case of **State of U.P. and others vs. Ajay Kumar Sharma and another (supra)** in para 18 & 19 recorded as under:

“18. Sitting in a Division Bench of two, we at present can do no better than apply the rules of precedent as have been left for us to follow. The law pertaining to the appointment of Additional District Government Counsel, Assistant District Government Counsel, Panel lawyers and Sub District Government Counsel was directly in issue before the Three-Judge Bench in *State of U.P. v. Johri Mal*, (2004) 4 SCC 714 where the law has been comprehensively clarified. No purpose is served by discussing *Kumari Shrilekha Vidyarthi* or any judgments rendered thereafter.

19. In *Johri Mal*, this Court perused the LR Manual as also the Code of Criminal Procedure and reiterated that the District Counsel stood professionally engaged; that the State Government was free to determine the course of action after

being satisfied of their performance, and that the Courts must be circumspect in the exercise of judicial review on matters which fell within the discretion of the State Government, i.e. appointment of their counsel or advocates. This Court reiterated that the District Counsels do not enjoy the statutory rights with respect to the renewals of tenures and the State Government enjoyed the discretionary powers in this respect. The curial performance of the advocates should not be the sole criterion for their re-appointment as District Counsel and that the State Government must be free to repose trust and confidence in the persons whom they choose to appoint as their advocates. We can do no better than reproduce the following paragraphs from this judgment which is binding on us as also on any and every other Two-Judges Bench:

“**40.** So long as in appointing a counsel the procedures laid down under the Code of Criminal Procedure are followed and a reasonable or fair procedure is adopted, the court will normally not interfere with the decision. The nature of the office held by a lawyer vis-à-vis the State being in the nature of professional engagements, the courts are normally chary to overturn any decision unless an exceptional case is made out. The question as to whether the State is satisfied with the performance of its counsel or not is primarily a matter between it and the counsel. The [Code of Criminal Procedure](#) does not speak of renewal or extension of tenure. The extension of tenure of Public Prosecutor or the District Counsel should not be compared with the right of renewal under a licence or permit granted under a statute. The incumbent has no legal enforceable right as such. ...”

41. In *Om Kumar v. Union of India*, (2001) 2 SCC 386 it was held that where administrative action is challenged under Article 14 as being discriminatory, equals are treated unequally or unequals are treated equally, the question is for the Constitutional Courts as primary reviewing courts to consider the correctness of the level of discrimination applied and whether it is excessive and whether it has a nexus with the objective intended to be achieved by the administrator. For judging the arbitrariness of the order, the test of unreasonableness may be applied. The action of the State, thus, must be judged with extreme care and circumspection. It must be borne in mind that the rights of the Public Prosecutor or the District Counsel do not flow under a statute. Although, discretionary powers are not beyond the pale of judicial review, the courts, it is trite, allow the public authorities sufficient elbow space/play in the joints for a proper exercise of discretion.

...

44. Only when good and competent counsel are appointed by the State, the public interest would be safeguarded. The State while appointing the Public Prosecutors must bear in mind that for the purpose of upholding the rule of law, good administration of justice is imperative which in turn would have a direct impact on sustenance of democracy. **No appointment of Public Prosecutors or District Counsel should, thus, be made either for pursuing a political purpose or for giving some undue advantage to a section of the people. Retention of its counsel by the State must be weighed on the scale of public interest. The State should replace an efficient, honest and competent lawyer, inter alia, when it is in a position to appoint a more competent lawyer. In such an event, even a good performance by a lawyer may not be of much importance.**

...

46. The Code of Criminal Procedure does not provide for renewal or extension of a term. Evidently, the legislature thought it fit to leave such matters at the discretion of the State. **It is no doubt true that even in the matter of extension or renewal of the term of Public Prosecutors, the State is required to act fairly and reasonably. The State normally would be bound to follow the principles laid down in the Legal Remembrancer's Manual.**

...

75. In the matter of engagement of a District Government Counsel, however, a concept of public office does not come into play. However, it is true that in the matter of counsel, the choice is that of the Government and none can claim a right to be appointed. That must necessarily be so because it is a position of great trust and confidence. The provision of Article 14, however, will be attracted to a limited extent as the functionaries named in the Code of Criminal Procedure are public functionaries. They also have a public duty to perform. If the State fails to discharge its public duty or acts in defiance, deviation and departure of the principles of law, the court may interfere. The court may also interfere when the legal policy laid down by the Government for the purpose of such appointments is departed from or mandatory provisions of law are not complied with. Judicial review can also

be resorted to, if a holder of a public office is sought to be removed for reason *dehors* the statute. ”

Coming to the judgement of **State of Punjab and another vs. Brijeshwar Singh Chahal and another**, the Hon'ble Supreme Court was considering appointments of Government Counsels in the State of Punjab and Haryana. The Supreme Court noted that in the State of Haryana and Punjab there was no procedure prescribed for appointment of Government Counsels akin to the procedure in the State of Uttar Pradesh i.e. L.R. Manual. However, the Supreme Court, after considering the submissions made at the bar framed the following four questions for its consideration;

- (1) Whether the States of Punjab and Haryana have made any realistic assessment of their requirement before making appointments of Law Officers.
- (2) Whether the States of Punjab and Haryana have formulated any scheme, policy, norms or standards for appointing Law Officers.
- (3) Whether appointment of Law Officers by the State Governments need to be made on a fair, reasonable, non-discriminatory and objective basis; and
- (4) If answer to question Nos.1, 2 and 3 are found in the negative, what is the way forward?

Answer to the question no. 1 is recorded as under:

“The upshot of the above discussion is that for a fair and objective system of appointment, there ought to be a fair and realistic assessment of the requirement, for otherwise the appointments may be made not because they are required but because they come handy for political aggrandisement, appeasement or personal benevolence of those in power towards those appointed. The dangers of such an uncanalised & unregulated system of appointment, it is evident are multi-dimensional resulting in erosion of the rule of law, public faith in the fairness of the system and injury to public interest and administration of justice. It is high time to call a halt to this process lest even the right thinking become cynical about our capacity to correct what needs to be corrected.”

Considering the question no. 2, the Supreme Court held as under:

“It is, in our view, too late in the day for any public

functionary or Government to advance such a contention leave alone expect this Court to accept the same. If a Government counsel discharges an important public function and if it is the primary duty of those running the affairs of the Government to act fairly, objectively and on a non-discriminatory basis, there is no option for them except to choose the best at the bar out of those who are willing and at times keen to work as State counsel. It is also their duty to ensure that the process by which the best are selected is transparent and credible. Abdicating that important function in favour of the Advocate General of the State who, in turn, has neither the assistance of norms or procedure to follow nor a mechanism for assessment of merit will be self-defeating. We regret to say that in the matter of appointment of State Counsel, the States of Punjab and Haryana have much to do to reform the prevalent system which reform is in our opinion long overdue. Question No.2 is also answered in the negative.”

Considering the question no. 3 which is relevant for the facts of the present case, the Supreme Court considered the entire gamut of judgements which have led to the doctrine of judicial review to be extended to the administrative actions concluded as under:

“36. The development of law in this country has taken strides when it comes to interpreting Articles 14 and 16 and their sweep. Recognition of power exercisable by the functionaries of the State as a trust which will stand discharged only if the power is exercised in public interest is an important milestone just as recognition of the Court’s power of judicial review to be wide enough to strike at and annul any State action that is arbitrary, unguided, whimsical, unfair or discriminatory. Seen as important dimensions of the rule of law by which we swear the law as it stands today has banished from our system unguided and uncanalised or arbitrary discretion even in matters that were till recently considered to be within the legitimate sphere of a public functionary as a repository of Executive Power. Those exercising power for public good are now accountable for their action, which must survive scrutiny or be annulled on the first principle that the exercise was not for public good in that the same was either malafide, unfair, unreasonable or discriminatory. Extension of the principle even to contractual matters or matters like engagement of law officers is symbolic of the lowering of the threshold of tolerance for what is unfair, unreasonable or arbitrary. The expanding horizons of the jurisprudence on the subject both in terms of interpretation of Article 14 of the Constitution as also the court’s willingness to entertain pleas for judicial review is a heartening development on the judicial landscape that will disentitle exercise of power by those vested with it as also

empower those affected by such power to have it reversed if such reversal is otherwise merited.

37. The question whether a fair, reasonable and non-discriminatory method of selection should or should not be adopted can be viewed from another angle also equally if not more important than the need for preventing any infringement of Article 14. The State counsel appears for the State Government or for public bodies who together constitute the single largest litigant in our Court system. Statistics show that nearly 80% of litigation pending in the courts today has State or one of its instrumentalities as a party to it. State Counsel/counsel appointed by public bodies thus represent the largest single litigant or group engaged in litigation. It is also undeniable that for a fair, quick and satisfactory adjudication of a cause, the assistance which the Court gets from the Bar is extremely important. It is at times said that the quality of judgment or justice administered by the courts is directly proportionate to the quality of assistance that the courts get from the Counsel appearing in a case. Our system of administration of justice is so modelled that the ability of the lawyers appearing in the cause to present the cases of their respective clients assumes considerable importance. Poor assistance at the Bar by counsel who are either not sufficiently equipped in scholarship, experience or commitment is bound to adversely affect the task of administration of justice by the Court. Apart from adversely affecting the public interest which State counsel are supposed to protect, poor quality of assistance rendered to the courts by State Counsel can affect the higher value of justice itself. A fair, reasonable or non-discriminatory process of appointment of State Counsel is not thus demanded only by the rule of law and its intolerance towards arbitrariness but also by reason of the compelling need for doing complete justice which the Courts are obliged to do in each and every cause. The States cannot in the discharge of their public duty and power to select and appoint State counsel disregard either the guarantee contained in Article 14 against non-arbitrariness or the duty to protect public interest by picking up the best among those available and willing to work nor can the States by their action frustrate, delay or negate the judicial process of administration of justice which so heavily banks upon the assistance rendered by the members of the Bar.

38. To sum up, the following propositions are legally unexceptionable:

The Government and so also all public bodies are trustees of the power vested in them.

Discharge of the trust reposed in them in the best possible manner is their primary duty.

The power to engage, employ or recruit servants, agents, advisors and representatives must like any other power be exercised in a fair, reasonable, non-discriminatory and objective manner.

The duty to act in a fair, reasonable, non-discriminatory and objective manner is a facet of the Rule of Law in a constitutional democracy like ours.

An action that is arbitrary has no place in a polity governed by Rule of Law apart from being offensive to the equality clause guaranteed by Article 14 of the Constitution of India.

Appointment of Government counsel at the district level and equally so at the High Court level, is not just a professional engagement, but such appointments have a “public element” attached to them.

Appointment of Government Counsel must like the discharge of any other function by the Government and public bodies, be only in public interest unaffected by any political or other extraneous considerations.

The government and public bodies are under an obligation to engage the most competent of the lawyers to represent them in the Courts for it is only when those appointed are professionally competent that public interest can be protected in the Courts.

The Government and public bodies are free to choose the method for selecting the best lawyers but any such selection and appointment process must demonstrate that a search for the meritorious was undertaken and that the process was unaffected by any extraneous considerations.

No lawyer has a right to be appointed as a State/Government counsel or as Public Prosecutor at any level, nor is there any vested right to claim an extension in the term for which he/she is initially appointed. But all such candidates can offer themselves for appointment, re-appointment or extension in which event their claims can and ought to be considered on their merit, **uninfluenced by any political or other extraneous considerations.**

Appointments made in an arbitrary fashion, without any transparent method of selection or for political considerations will be amenable to judicial review and liable to be quashed.

Judicial review of any such appointments will, however, be limited to examining whether the process is affected by any illegality, irregularity or perversity/irrationality. The Court exercising the power judicial review will not sit in appeal to reassess the merit of the candidates, so long as the method of appointment adopted by the competent authority does not

suffer from any infirmity.”

Considering the 4th question and the fact that in the State of Punjab and Haryana (supra) there was no guidelines existing for appointment to the post of Government Counsels at the district level. The Supreme Court taking a cue from Section 24 held as under:

“**43.** Consultation with the Sessions Judge for a Public Prosecutor in the District judiciary and with the High Court for one in the High Court is statutorily prescribed because of the importance of the appointment and the significance of the opinion of the Courts where the appointee has to work, as to his or her capacity and professional ability. The statute does not admit of an appointment in disregard of the requirement of consultation. The Law Commission has, therefore, rightly held the consultative process to be a check on the power of appointment which cannot be left unregulated or uncontrolled, lest a person not suited or competent enough gets appointed to the position for other reasons or considerations. Consultation, in that sense, lends reassurance as to the professional ability and suitability of the appointee. The Commission has on that premise placed a question mark on the validity of State amendment that deletes from Section 24 of the Code of Criminal Procedure Code the need for consultation with the Sessions Judge or the High Court.

44. Taking a cue from the provisions of Section 24, we are inclined to hold that what serves as a check on the power of the Government to appoint a Public Prosecutor can as well be a check on the appointment of the State Counsel also. That is because, while the Public Prosecutor’s power under the Code of Criminal Procedure gives him a distinctive position, the office of a State Counsel, in matters other than criminal, are no less important. A State Counsel by whatever designation called, appears in important civil and constitutional matters, service and tax matters and every other matter where substantial stakes are involved or matters of grave and substantial importance at times touching public policy and security of State are involved. To treat such matters to be inconsequential or insignificant is to trivialise the role and position of a State Counsel at times described as additional and even Senior Additional Advocate General. What holds good for appointment of a Public Prosecutor as a check on arbitrary exercise of power must, therefore, act as a check on the State’s power to appoint a State Counsel as well especially in situations where the appointment is unregulated by any constitutional or statutory provision. Such a requirement is implicit in the appointing power of the State which power is in trust with the government or the public body to be exercised only to promote public interest. The power cannot be

exercised arbitrarily, whimsically or in an un-canalised manner for any such exercise will fall foul of Article 14 of the Constitution of India and resultantly Rule of law to which the country is committed.

45. We have while dealing with question No.1 held that no lawyer has a right to be appointed as State Government counsel or as public prosecutor at any level nor does he have a vested right to claim extension in the term for which he/she is initially appointed. We have also held that all candidates who are eligible for any such appointment can offer themselves for re-appointment or extension in which event their claims can and ought to be considered on their merit uninfluenced by any political or other extraneous consideration. It follows that even the writ-petitioners cannot claim appointment or extension as a matter of right. They can at best claim consideration for any such appointment or extension upon expiry of their respective terms. Such consideration shall, however, have to be in accordance with the norms settled for such appointments and on the basis of their inter se merit, suitability and performance if they have already worked as State counsel. To that extent, therefore, there is no difficulty. The question is what should be the mechanism for such consideration. There are in that regard two major aspects that need to be kept in mind. The first is the need for assessment and requirement of the State Governments having regard to the workload in different courts. As noticed earlier, appointments appear to have been made without any realistic assessment of the need for State counsel at different levels. Absence of a proper assessment of the requirement for State counsel leads to situations that have been adversely commented upon by the CAG in his report to which we have made a reference in the earlier part of this judgment. The problem gets compounded by those in power adding to the strength of government advocates not because they are required but because such appointments serve the object of appeasement or private benevolence shown to those who qualify for the same. The CAG has in that view rightly observed that there ought to be a proper assessment of the need before such appointments are made.

46. The second aspect is about the process of selection and assessment of merit of the candidates by a credible process. This process can be primarily left to the State Government who can appoint a Committee of officers to carry out the same. It will be useful if the Committee of officers has the Secretary to Government, Law Department, who is generally a judicial officer on deputation with the Government as its Member- Secretary. The Committee can even invite applications from eligible candidates for different positions. The conditions of eligibility for appointment can be left to the Government or the Committee depending upon the nature and

the extent of work which the appointees may be effected to handle. The process and selection of appointment would be fair and reasonable, transparent and credible if the Government or the Committee as the case may be also stipulates the norms for assessment of merit and suitability.

47. The third stage of the process of selection and appointment shall in the absence of any statutory provisions regulating such appointments involve consultation with the District & Sessions Judge if the appointment is at the district level and the High Court if the appointment is for cases conducted before the High Court. It would, in our opinion, be appropriate and in keeping with the demands of transparency, objectivity and fairness if after assessment and finalisation of the selection process a panel is sent to the Chief Justice of the High Court concerned for his views on the subject. The Chief Justice could constitute a Committee of Judges to review the names recommended for appointment and offer his views in regard to professional competence and suitability of candidates for such appointments. Appointments made after such a consultative process would inspire confidence and prevent any arbitrariness. The same procedure could be followed where candidates are granted extension in their terms of appointment in which case the Committee appointed by the government and that constituted by the Chief Justice could also look into the performance of the candidates during the period they have worked as State counsel.

The salient features that can be culled out from the pronouncements of the Hon'ble Supreme Court are as under:

- “(i) No person can claim appointment to the District Government Counsel as a matter of right.
- (ii) Posts of the District Government Counsel is a post of public importance and sensitive to the justice delivery system.
- (iii) The appointments to the said posts is on the discretion of the State Government, however, the said discretion should be exercised reasonably and fairly and in the interest of public without any element of arbitrariness or fulfillment.
- (iv) There is no place for political intervention in the appointment process. The procedure whether it is statutory or administrative should confirm to the test of fairness and non-arbitrariness.
- (v) Process of selection should be after due consultation with District Judge or Committee.”

Thus, from the pleadings and judgements referred to above, it is clear that the procedure prescribed under the L.R. Manual although does

not have statutory flavour, none the less provide the guidelines and the manner of appointment which conforms to the fairness doctrine as accepted and perpetuated and this should be followed in letter and spirit. The manner of appointment which includes consultation with the District Judge or any Committee constituted by the District Judge for shortlisting the candidates is a fair procedure and should be necessarily followed while making the appointments to the post of Government Counsels at the district level i.e. D.G.C., Additional D.G.C. and Assistant D.G.C. In fact, the procedure prescribed was duly followed in the present case. The 51 candidates were shortlisted in a transparent and fair manner which cannot be faulted or challenged on the ground of violation of fairness doctrine.

This Court however fails to understand as to how the Minister of Law and Justice could have forward 19 names along with mobile numbers of the advocates for being recommended by the District Magistrate for being appointed by the State of Uttar Pradesh. The said process was clearly without any powers conferred either by virtue of L.R. Manual or Section 24 Cr.P.C. or by any constitutional powers and thus smacks of arbitrariness, the same is also in the teeth of the directions given in the case of **Ajay Kumar Sharma (supra) & Johri Mal (supra)** which repel any political say in the appointments. There is nothing on record in the present case to establish as to how did the Hon'ble Minister come to make the choice while recommending the 19 names, in fact, on the record, there are recommendation even by retired IAS Officers for particular names which again smacks of arbitrariness, the manner of recommendation of the names by Hon'ble Minister and forwarded without any application of mind by the Secretary and the Under Secretary to the State of U.P. again are highly arbitrary and are against the principles of good governance, which is the foundation of the constitutional principles as enshrined under the Constitution of India. This Court is again pained to note that the entire process through which 19 names were recommended,

did not at any stage involved either the Legal Remembrancer or the District Judge concerned. It is also borne out from record that out of the 19 names three names were of the counsels whose names were mentioned in the list of 51 advocates which were recommended in accordance with the L.R. Manual and after following the procedure as prescribed under the L.R. Manual, this Court also notices that under the L.R. Manual a duty is cast upon the District Magistrate to observe the instructions in the L.R. Manual while recommending the names for appointment to the post of District Government Counsels. However, the District Magistrate did not address to the Manual and recommended the 19 names as were directed to be recommended by the Under Secretary. The District Magistrate did not even make any consultation with anyone prior to recommending the names as dictated by the Under Secretary. Thus, in the present case, the appointments have been made under the dictates of the Minister, who in turn, dictated the Secretary (Law) to recommend the names and, who in turn, further dictated the District Magistrate to recommend the names of 19 and out of the said 19 names 14 names were finalized for appointment. It is well settled that the powers conferred on the executive authorities should be exercised in a fair and reasonable manner and if any manner of exercise of powers is prescribed the same should be done in that manner alone. There is no explanation on record in the present case as to why did the District Magistrate not have any consultation with the District Judge prior to recommending the 19 names as was done by him under the dictation from the under Secretary. The Supreme Court while dealing with the bureaucrat politician relationship under the Indian Constitution in case **Tarlochan Dev Sharma vs. State of Punjab, 2001(6)SCC 260** observed as under:

15. It is interesting to view the present day bureaucrat-politician relationship scenario:

“A bureaucratic apparatus is a means of attaining the goals prescribed by the political leaders at the top. Like Alladins lamp, it serves the interest of whosoever wields it. Those at the helm of affairs exercise apical

dominance by dint of their political legitimacy. The ministers make strategic decisions. The officers provide trucks, petrol and drivers. They give march orders. The minister tells them where to go. The officers have to act upon instructions from above without creating a fuss about it.” (“Effectiveness of Bureaucracy”, *The Indian Journal of Public Administration*, April-June 2000, at p.165).

16. In the system of Indian Democratic Governance as contemplated by the Constitution, senior officers occupying key positions such as Secretaries are not supposed to mortgage their own discretion, volition and decision-making authority and be prepared to give way or being pushed back or pressed ahead at the behest of politicians for carrying out commands having no sanctity in law. The Conduct Rules of Central Government Services command the civil servants to maintain at all times absolute integrity and devotion to duty and do nothing which is unbecoming of a Government servant. No Government servant shall in the performance of his official duties, or in the exercise of power conferred on him, act otherwise than in his best judgment except when he is acting under the direction of his official superior. In **Anirudhsinhji Jadeja (1995) 5 SCC 302**, this court has held that a statutory authority vested with jurisdiction must exercise it according to its own discretion; discretion exercised under the direction or instruction of some higher authority is failure to exercise discretion altogether. Observations of this court in **The Purtabpur Company Ltd., AIR 1970 SC 1896**, are instructive and apposite. Executive officers may in exercise of their statutory discretions take into account considerations of public policy and in some context, policy of Minister or the Government as a whole when it is a relevant factor in weighing the policy but they are not absolved from their duty to exercise their personal judgment in individual cases unless explicit statutory provision has been made for instructions by a superior to bind them. As already stated, we are not recording, for want of adequate material, any positive finding that the impugned order was passed at the behest of or dictated by someone else than its author. Yet we have no hesitation in holding that the impugned order betrays utter non-application of mind to the facts of the case and the relevant law. The manner in which the power under Section 22 has been exercised by the competent authority is suggestive of betrayal of the confidence which the State Government reposed in the Principal Secretary in conferring upon him the exercise of drastic power like removal of President of a Municipality under Section 22 of the Act. To say the least what has been done is not what is expected to be done by a senior official like the Principal Secretary of a wing of the State

Government. We leave at that and say no more on this issue.

We are also inclined to accept the submissions made by learned counsel for the petitioner that even if the State Government feels that the process of finalizing the names cannot be completed or concluded, the short term arrangements as envisaged under Para 7.10 L.R. Manual should be resorted and the appointments should be made only out of the panel lawyers that exists prior to the finalization of the panel in terms of the advertisements issued. There is nothing on record in the present case to establish as to what objective satisfaction was recorded either by Hon'ble Minister, or the Chief Secretary (Law), the Under Secretary (Law) or the District Magistrate while recommending the said names.

Thus, testing the appointments only on the ground of decision making process, this Court is of the firm view that the decision making process in recommending the 19 names and then recommending the 14 names by the impugned order in the present writ petition suffers from the vice of arbitrariness, unreasonableness and, thus, are violative of Article 14 of the Constitution of India. The same are also in violation of law laid down by the Supreme Court in case of **Johri Mal, Ajay Kumar Sharma & Brijeshwar Singh Chahal (supra)**

In view of the findings recorded above and after considering the law as laid down by the Hon'ble Supreme Court, this Court has no hesitation in holding that the appointments made vide order dated 29.11.2018 (Annexure-15 to the writ petition) are liable to be quashed as being wholly arbitrary and illegal. The State Government is directed to complete the appointments as finalized in pursuance of the advertisement dated 08.12.2017 and out of the 51 names recommended after due consultation by the Committee constituted by the District Magistrate (Annexure-13 to the writ petition) within a period of four months. However, for a period of four months, the State Government is free to make appointments in terms of Para 7.10 L.R. Manual out of the panel as already existed in the District Ballia as on 08.12.2017.

The writ petition is allowed in terms of the order passed above. Original records be returned to Sri Neeraj Tripathi, learned Additional Advocate General.

Order Date :- 07.05.2019
Puspendra