
(2016) 01 AHC CK 0068
In the Allahabad High Court
Case No : Misc. Bench No. 11917 of 2015

Amitabh Thakur

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 05-01-2016

Acts Referred:

Citation : (2016) 3 AllWC 3095 : (2016) 34 LCD 498

Hon'ble Judges : Amreshwar Pratap Sahi and Attau Rahman Masoodi, JJ.

Bench : Division Bench

Advocate : Ashok Pande, for the Appellant;

Final Decision : Dismissed

Judgement

1. This writ petition has been filed for a mandamus to the respondent Chief Secretary, Government of U.P. and the Principal Secretary (Law) for taking precautions in the exercise of appointment of special counsel, particularly in the cases which are filed by the petitioner in person or otherwise and also to disclose reasons for appointment of special counsel in order to ensure transparency as it involves huge State Exchequer.
2. A direction has been sought also to the effect that an enquiry should be made as to why special counsel are engaged in the cases filed by the petitioner and to take care that any facts relating to the petitioner should be confidentially maintained so that the petitioner is not put to any disadvantaged position on account of such biased act on the part of the Government.
3. The action of the State Government has been described as discriminatory, vindictive and tainted with vengeance as the petitioner has been making complaints directly against the present Chief Minister of the State and his father as narrated in the writ petition.
4. The contention of Sri Ashok Pande, learned counsel for the petitioner is that the State Exchequer should not be allowed to be spent on engagement of special

counsel merely because the allegations made by the petitioner are against the highest political authority of the State.

5. In short the contention is that the approach of vendetta to somehow the other dislodge the legal battle, being fought by the petitioner to protect his rights, should not be allowed at the cost of public exchequer.

6. Learned counsel has taken the aid of the State Litigation Policy entailed in paragraphs 15 to 19 to urge that the State Government has been flouting its own policy and has been engaging a senior counsel or a special counsel in violation of the said policy involving huge public cost.

7. As a corollary to the aforesaid argument, Sri Pande submits that the State Panel is already enlisted with a large number of advocates, including designated senior counsel, and it is not understood as to why the State Government has not chosen to repose confidence in the already empaneled counsel to defend itself, and has to the contrary, for no valid reason, engaged special counsel to oppose the petitioner's writ petition at least on half a dozen occasions. According to Sri Pande, this reflects on the selection of competent counsel by the State Government and their appointment on the State Panel and therefore such an enquiry is needed.

8. In our considered opinion, the petition appears to be primarily framed in opposition to choice of the State in engaging a special counsel to oppose the petitioner's cases even though there are empaneled advocates on the State Panel for the said purpose.

9. The choice of engaging a counsel either by the State or by any litigant rests on a matter of faith and confidence. This does not necessarily mean that the State Government doubts the competence of the State Empaneled Lawyers. The question of handling a particular case selectively by a special counsel cannot be termed as an act of discrimination or otherwise any imprudent act unless there was material to show that such engagement was of an incompetent person or was an outcome of nepotism to favour any counsel who did not have any competence of practice in the field of law. To the contrary, the petitioner himself acknowledges that these special counsel are of eminence and have been ably recognized by virtue of their competence in courts of law. In such a situation, if the choice of the State Government has fallen to engage a special counsel, then such an engagement cannot be said to be beyond the competence of the State Government to do so.

10. In the present case the respondent State Government is represented by the Additional Advocate General, Ms. Bulbul Godiyal and the learned Additional Chief Standing Counsel.

11. The petitioner's inability to engage any prominent or eminent counsel inspite of the fact that he is an I.P.S. Officer is also a matter of his personal choice and his own capacity. In the present case we find that Sri Ashok Pande has pleaded

the needful as any other seasoned lawyer. The petitioner is also therefore evenly placed in the matter of choice of a counsel.

12. So far as a court of law is concerned, any person who is enrolled as an advocate under the Advocates Act 1961 enjoys the liberty and authority to conduct a case on behalf of his client and nothing prevents any lawyer to represent the litigant to the best of his ability. It is not necessary that a case can be won only by engaging an eminent counsel. To the contrary many eminent lawyers are engaged who are also at the losing end. The eminence of a counsel is not acknowledged only by designation as a senior counsel but by his or her forensic ability and capacity of legal acumen to handle matters. Common sense, wit, persuasion, logic, knowledge and experience - all combine together to add to the personality of a humble and truly eminent lawyer. Winning or losing of cases is no barometer for gauging the competence of a lawyer. It is sincerity, honest devotion and use of proper intellect that brings recognition about one's eminence.

13. The choice of litigant including the State Government, therefore, cannot be objected to in the manner in which it has been raised in the present writ petition. The petitioner in our opinion cannot compel the respondent State to engage a weak counsel or not to engage an eminent counsel. This exercise of choice cannot be regulated by the petitioner for whom it is open to take any possible legal assistance for himself that is available under law.

14. There is however another issue related to the engagement of counsel by the State. The State Government is not an ordinary litigant and the engagement of a panel of lawyers by it is governed by its own regulations contained in the Legal Remembrancer's Manual and Government Orders issued from time to time. The State Government, therefore, has to take care that it is sufficiently represented by qualitatively competent counsel to represent the cause of the State Government in courts of law. Not only this, the payment of legal expenses also has to be regulated as it involves spending of public exchequer and is not a matter of distribution of largesse to engage counsel who otherwise may not be capable of handling State briefs.

15. It is no doubt true that there are regulatory measures for payment of fee to State empaneled counsel, but at the same time engagement of special counsel is also permissible for which the State Guidelines through a policy can be spelt out for any proper representation in cases where stakes of vital public interest or other important matters are involved. This care deserves to be taken and the coffers of the State should not be allowed to be utilized for any individual or personal gains as most of the time the State is itself a reason for litigation. We are making these observations as it involves spending of public money for a professed public cause and not for any individual benefit. It is therefore apt to also observe that the State Government through its officials should be careful in allowing their choice to fall upon the engagement of special counsel appropriately and not indiscriminately.

16. In the present case on the facts so represented, we do not find any material to get any enquiry conducted as prayed for or entertaining the writ petition to adjudicate the apprehensions expressed by the petitioner. The writ petition is therefore consigned to records with the said observations.