

(2015) 05 AHC CK 0030
In the Allahabad High Court
Case No : Misc. Bench No. 6698 of 2013

Asok Pande

APPELLANT

Vs

Allahabad High Court

RESPONDENT

Date of Decision : 22-05-2015

Acts Referred:

Advocates Act, 1961 — Section 16, 16(2), 16(3), 17, 2(1)(a)
Constitution of India, 1950 — Article 102, 14, 141, 15, 18
Government of India Act, 1935 — Section 212
Representation of the People Act, 1951 — Section 29(A), 8(3), 8(4)

Citation : (2015) 05 AHC CK 0030

Hon'ble Judges : Amreshwar Pratap Sahi, J; Aditya Nath Mittal, J

Bench : Division Bench

Final Decision : Disposed off

Judgement

1. The petitioner, a practising advocate, who professes to be a seeker of justice and who claims to have fought legal battles involving public issues of importance and has excelled in the profession, has come forward praying for repairing the damage caused due to the promulgation of rules regulating the designation of a distinction, that of a Senior Advocate, which according to him is bestowing of an honour, and thus the High Court should not cage itself within impermissible parameters of law so as to frustrate the very purpose of this choice. Rules, according to him, should not put shackles on the free expression of opinion by the Full Court so as to narrow down the objective of a true search and identification of exceptional legal talent. The process of selection should be by way of direct recognition and not stultified through an advisory opinion of a body of lesser numbers that has no statutory authorization.

2. Subjectivity in choice of such conferment according to him should not prevail to an extent that those like the petitioner, who by their dint of hard labour and devotion have made a place for themselves in the profession worthy of timely recognition, should be left ignored, and on the other hand undeserving and calculative brains should reap honours at the hands of sheer whimsical franchise

through a short cut method of screening by a minuscule number of Judges. He therefore by exercising his right of freedom of speech and expression trumpets a caution.

3. There can be hardly a dispute with the proposition advanced by Sri Pande that a process for conferring a distinction should be of the utmost careful selection to avoid any pointing of fingers and no rule that diminishes such exercise should serve as a statutory block while granting clearance, that too by Judges who are mortals but are supposed to discharge divine duties.

4. We would only supplement this apprehension and Mr. Pande's discomfort by saying that lofty and tall claims through self promotion, open canvassing and advertisement are not the methods through which such distinction can be achieved. A craving or a desire is different from a true and genuine ambition, because a bona fide and honest pursuit with pure devotion is a virtue that comes as a natural attribute to a real disciple of the profession. To be simply desirous without dedication, and with the aid of stilts and artificial crutches, one can acquire wealth and can become affluent, but that would not gather respect or distinction. One can be widely known by his infamous demeanors but that would be an identity inviting avoidance by society and not a mark for conferring distinction. The mere amassing of briefs and sheer quantity of cases handled is no measure of professional achievement for conferment of a distinction. This can be earned only through qualitative delivery and real service to a cause to achieve the ends of justice. This may occur with the handling of a single complex dispute that would weigh against a hundred routine matters.

5. In monetary terms an ambulance chaser may have a heavy return to file but that is no reflection of sincerity to the cause of justice. The spirit of dedication cannot be purchased through the mint. It has its foundations in virtues of the profession. Decency, observance of ethical values and a good reputation of character, professional as well as personal, are some indicators. It is this acquisition which counts for what the statute defines and aims at "standing at the bar". It is for this reason that a distinction should be conferred on one who can sustain responsibility on his shoulders and does not become a burden for himself or for the fraternity.

6. Eminence and distinctions are achieved by merit, that is, on being worthy and deserving. It is only thereafter that honour follows that is acknowledged and respected because of one's excellence. Public recognitions are achieved through various methods but all are not merited. It is because of this that the saying goes "some are born great, some achieve greatness and some have greatness thrust on them", but at times there are a few who sometimes do unpleasant things to gain prominence as if they are suffering from some identity crisis. This is not merit in the real sense. Paid and sponsored litigation to tarnish somebody's image and to demean somebody's established stature or cause motivated deprivation may attract attention but is not an act deserving distinction. Respect commanded through reputation, and not mere popularity or

glamour, is another dimension for such recognition. The bench addresses a lawyer as "learned counsel" because of his worthy and honourable profession, and his position and learning that is founded on recognition and respect. The practice of law therefore carries with it virtues of devoted practice, and one who excels in such accomplishments and proves himself to be exceptionally able, that he deserves a distinction.

7. The petitioner who is a practicing lawyer basically stationed at the Lucknow Bench of this Court felt aggrieved when the full court meeting was to take place on 4th August, 2013 for taking up the agenda of designation of Senior Advocates by the High Court on being ignored and therefore he has expressed his anguish in Paragraph 12 of the petition as follows:-

"12. That he also now has around 25 years of practice and yet despite being the most deserving candidate, he is being ignored for the designation of "Senior Advocate." Why?"

8. His grievance is that inspite of his achievements as a lawyer he was not being scrutinized for being denominated as a Senior Advocate on account of the defective procedure prescribed under the rules which he has stated in Paragraph 13 of the petition as follows:-

"13. That the only reason to this, "why" is the present faulty system rules and procedures presently been framed to select/designate Senior Advocates."

9. The petitioner enlists his achievements as being sufficient enough to recognize his contributions to the legal field for being designated as a Senior Advocate and describes himself as a deserving candidate by mentioning his wide ranged acquisitions as sufficient to bring him within the fold of the parameters fixed by the statute for being designated as a Senior Advocate in the following words in Paragraphs 10 and 11 of the petition extracted here in under:-

"10. That it is because the petitioner is a brilliant lawyer, a constitutional expert, a lawyer will novel ideas and lots of ideals. He is a public spirited person, with around 100 Public Interest Litigations (PILs) to his credit, in the Hon"ble Allahabad High Court and the Hon"ble Supreme Court of India. These PILs have been concerned about various facets of life and society but most of them have been related to Constitutional matters. Thus whenever a question of law or of the suitable interpretation or clarification of the Constitution of India has come to his notice, he has always been bringing them before the Hon"ble Courts. None of these PILs had ever been filed for any ulterior motives or for any unwarranted or improper incentive. The purity of the motive of filing these PILs for the sake of aiding and assisting for the sake of justice had always been there. Not all his PILs have been welcomed by various Hon"ble Courts but when in retrospect it seems that this had more to do with the inherent limitations of the concerned Hon"ble Judges, who often turned their eyes from a matter of great public and constitutional importance, if they found the question a bit difficult or uncomfortable to handle vis-a-vis their personal positions. There are a very large

number of instances when the Hon''ble Judges publicly acknowledged in the open Court that what Mr. Ashok Pande is saying does have merit but their inherent limitations force them to steer clear of the concerned issues. Most of the time, he had generous enough to forget and forgive the matter because making an unnecessary issue is not his way of working. A few of the petitioner's more important works include-

(i) The petitioner was the first person to take the issue of Foreign origin of Ms. Antonia Maino when he filed the Writ Petition Global Human Rights Organization vs. Union of India and others in the Hon''ble Supreme Court, as the Chairman of this Organization. This matter was taken up by the Hon''ble Apex Court in April, 1999.

(ii) The petitioner once again approached the Hon''ble Apex Court in Ashok Pande vs. Union of India and others in May 2004 where he prayed to declare emergency under Article 352 of the Constitution of India and not to hand over the charge of Prime Minister to a foreign lady Ms. Antonia Maino.

(iii) In 2000, the petition in Ashok Pandey vs. Union of India and others challenged the recommendation sent by the Chief Justice of the Hon''ble Allahabad High Court for the appointment of Judges in the High Court on the ground that out of the list of 17 names, 8 were relatives of the present High Court Judges. On this an enquiry was instituted by the Law Ministry, Government of India and on the result of the enquiry appointment of many such improper nominations got cancelled all over India.

(iv) In 2004, he filed an important Writ Petition in the Hon''ble Allahabad High Court regarding removal and recall of Governors challenging the curtailment in autonomy of the Governors.

(v) In 2004, the petitioner challenged the vires of section 8(4) of the Representation of People's Act which provides that even after conviction a sitting member of Parliament or State legislature can continue in office on ground of being violative of provisions of Article 102 and 191 of the Constitution and section 8(3) of the Representation of People's Act which disqualifies a person from being chosen from the date of conviction.

(vi) In 2004, the petitioner challenged in Prem Chand Sharma Vs. Union of India the appointment of Sri Laloo Prasad Yadav as Railway Minister on the ground that his election from Madhepura was unconstitutional.

(vii) In 2007, he filed a petition in the Hon''ble Supreme Court, Ashok Pandey vs. Union of India as regards the revered Ram Setu at Kanyakumari about which the then Union Government was taking a vacillating and inappropriate stand.

(viii) In 2007, the petitioner challenged the appointment of Ms. Mayawati as the Chief Minister of Uttar Pradesh on the ground that as per the Constitution, a non-member can be appointed Chief Justice but a Member of Parliament can't be appointed so.

(ix) In 2009, the petitioner filed a Writ Petition in the Hon''ble Supreme Court where he demanded subsidy for Hindus going to pilgrimage of important Hindu shrines on the pattern of Hajj subsidy.

(x) In 2009, the petitioner filed a Writ Petition in the Hon''ble Allahabad High Court where he raised the issue that the tenure of the Hon''ble Chief Justices of the Supreme Court and the High Courts shall be fixed, in tune with that of the President of India and the Governors of the various States.

(xi) In 2010, the petitioner filed a petition asking for enhancement of age of retirement of the Hon''ble Judges of the Supreme Court and the High Courts and for making provision on the pattern of Judges for Life prevalent in the USA.

(xii) In the same year, he filed another petition Ashok Pande Vs. Union of India and others where he asked for providing plane/helicopters for the Hon''ble Chief Justices of the Supreme Court and the High Courts.

(xiii) In 2010 again, the petitioner challenged Reservation of allotment of symbols Order 1968 on the ground of its being in violation of Article 14 and 15 of the Indian Constitution and Rule 10 of the Conduct of Elections Rules 1961 and section 29(A) of the Representation of People's Act.

(xiv) The petitioner has been instrumental in filing of many petitions including Dr. Nutan Thakur vs. Union of India, Yogendra Singh Chauhan vs. Union of India and Ram Nayak Tiwari vs. Union of India in which the issue of deletion of the provision of anticipatory bail in Uttar Pradesh through a State amendment has been raised as being against the provisions of the Constitution where the matter is presently under active consideration before the President of India.

(xv) In 2011 the petitioner challenged the inclusion of private members in the Drafting committee of Lokpal (Ashok Pande and another vs. Union of India), he was instrumental in filing of Writ Petition for checking arbitrary raise in the airline prices (Dr Nutan Thakur vs. Union of India) and for reconsideration about India's membership in Commonwealth (Dr. Nutan Thakur vs. Union of India).

(xvi) In 2011 itself, the petitioner challenged the vires of the section 2 of Minister's Salaries Act which defines the term Minister to include State and Deputy Minister on its being against the Constitutional provisions.

The petitioner has been filing all these Public Interest Litigations (PILs) only for the sake of his social and legal concerns and for constitutional and legal interpretations. While the petitioner has enumerated a handful of his cases, there are many other equally and more important cases which he argued either in person or as a counsel which have upheld shape the direction of legal recourse in the country.

11. That to the best of his knowledge and without any bragging the petitioner can easily say that in Constitutional and basic legal matters, there would be hardly any lawyer in this Hon''ble Court whose work would be anywhere near

that of the petitioner."

10. With the aforesaid factual foundation and on the eve of the full court meeting that was scheduled for 4th August, 2013, the present petition was entertained by a division bench of this Court where the petitioner appeared in person and the following order was passed on 2nd August, 2013:-

Hon"ble Devi Prasad Singh

Hon"ble Ashok Pal Singh

Mr. Ashok Pandey, who appears in person, has preferred the present writ petition under Article 226 of the Constitution of India challenging the validity of Designation of Senior Advocate Rules, 1999 (in short, 1999 Rules).

While assailing the impugned Rules, it has been submitted by Mr. Pandey that he spent 26 years at Bar but his name has not been forwarded by any Judge of this Court. He further submits that High Court means "Full Court" and the Committee constituted under Rule 3 of the Rules has no right to withhold the name or screen out the name of the advocates from placement before the Full Court.

Attention of this Court has been invited to Sub-section (2) of Section 16 of the Advocates Act, 1961 which provides that a Senior Advocate may be designated by the Supreme Court or a High Court if it is of the opinion that by virtue of his or her ability, standing at the Bar or special knowledge or experience in law, he deserves for such distinction. Sub-section (2) of Section 16 empowers the High Court to designate an Advocate as Senior Advocate. Whether the application forwarded to Hon"ble Chief Justice for designation of Senior Advocate should be placed before the Committee in terms of Rule 3 requires consideration.

Prima facie, it appears that on administrative side, High Court means Full Court and the name forwarded for designation as Senior Advocate may not be screened out by the Committee. Whether the person is entitled for designation as Senior Advocate or not is a subject matter, the consideration of which falls within the domain of the High Court i.e. Full Court.

Screening may be done and opinion may be expressed by the Committee but prima facie, it appears that the name of the advocates may not be withheld by the Committee comprising of seven Judges of the High Court as it shall not be a decision of the High Court. In view of above, we admit the writ petition. Issue notice to the learned Advocate General of the State calling counter affidavit within six weeks, rejoinder thereto within the next two weeks. List thereafter before appropriate regular Bench for peremptory hearing.

As an interim measure, the respondents are permitted to proceed with the Full Court proceeding but the names of the advocates who have been screened out by the Committee and not forwarded to the Full Court in pursuance to the power conferred by Rule 3 of 1999 Rules shall be kept alive by the High Court and shall be kept in seal cover envelope by the Registrar General of this Court which shall

be subject to further orders passed by this Court."

11. The full court was left to proceed with the meeting but the names of those advocates who had been screened out by the recommending committee under Rule 3 of the Designation of Senior Advocate Rules, 1999 and had not been forwarded, the same were directed to be kept alive and further to be maintained in a sealed cover envelope subject to any further orders to be passed in the present petition.

12. The matter has come up before us after Sri Upendra Nath Mishra moved an application for the listing of the case due to the notification dated 11th May, 2015 whereby fresh proceedings have been undertaken for designation of Senior Advocates and the exercise has been set into motion with a notice issued by the Registrar General on 11th May, 2015. Hon"ble the Chief Justice vide order dated 13.5.2015 has been pleased to nominate this bench by the following order:-

"Place before the Division Bench presided over by Hon"ble A.P. Sahi, J. on 18th May 2015 for final disposal."

13. The petitioner has prayed for striking down the entire rules, namely the Designation of Senior Advocate Rules, 1999 as contained in Chapter XXIV of the Allahabad High Court Rules, 1952 that have been framed in the exercise of powers under Section 16(2) and Section 34(1) of the Advocates Act, 1961. He has also prayed for not giving effect to the said rules and has finally prayed for issuance of a writ of certiorari declaring the said provisions as amended from time to time including the Amendment dated 18.12.2010 as ultra vires.

14. The main thrust of the arguments of the petitioner in person is in essence that by virtue of Rule 3 as it exists today, a seven judges committee has been conferred with the authority to make recommendations to the full court for consideration of designation of advocates as Senior Advocates, which provision according to the petitioner is ultra vires the provisions of Section 16(2) of the Advocates Act, 1961 that confers this authority exclusively on the High Court, which means the Full Court, and by this process of recommendation no candidate can be eliminated by a recommending body which jurisdiction and authority falls exclusively with the Full Court.

15. He further contends that there is a complete absence of guidelines and procedure to entertain and screen an application for recommendation and this gives an arbitrary hand to the seven judges committee to either accept and recommend an advocate for being designated as a Senior Advocate or to reject his candidature. Sri Pande asserts that such deliberations at times bring about unfortunate effects that have a lasting impact that questions the very credibility of the procedure for award of distinction.

16. This power to curtail the right of being considered therefore which is being exercised by the recommending body is beyond its competence as it would amount to usurping the function of the Full Court which is authorised essentially

to confer this distinction upon a consideration of the parameters as prescribed under Section 16(2) of the 1961 Act. In the absence of any procedure, the power to recommend is unbridled and unguided. Hence the provisions not being workable in consonance with Article 14 of the Constitution of India, the procedure for such recommendations should be given up and the High Court should be restrained from acting upon such exercise of recommendation by a seven judges committee.

17. His third contention is that the rules indicate invoking of the powers under Section 34(1) of the 1961 Act which is absolutely misplaced in so far as the function of recommendation of designation is concerned, inasmuch as, the power to regulate a practice would come into operation only after a person is designated as a Senior Advocate and prior to that his designation would be governed exclusively by Section 16(2) of the Act. He therefore contends that the description, that such rules are being made in the exercise of powers under Section 34(1) of the Act render it invalid, as the rule has been framed under a provision which does not authorize the regulation of the designation of Senior Advocates. The framing of such a rule therefore suffers from the vice of excessive legislation and delegation and is beyond competence. He has then invited the attention of the Court to the practical defects contending that senior advocates are mostly a burden on the court as they consume a lot of time in arguments which oral submission has been made at the bar, but one of the practical defects pointed out by the petitioner is in Paragraphs 28 and 29 of the petition which is extracted here in under:-

"28. That again Sub-rule (3) of rule 3 talks of choice by majority of Hon"ble Judges. This is again extremely improper. In this Hon"ble Court, roughly two-third Hon"ble Judges sit at Allahabad Bench and roughly one-third at Lucknow Bench. Thus it is obvious that majority of Hon"ble Judges sit at Allahabad Bench would possibly never have seen performance of advocates from Lucknow bench and vice-versa. In such situations, while the advocates in Allahabad Bench are assured of two-third Hon"ble Judges knowing them, the advocates at Lucknow are doing extremely well are generally known only to one-third Hon"ble Judges of Lucknow bench. Thus, they would always be below the majority level.

29. That such a situation will be avoided only when each advocate who seeks to become a senior advocate applies by himself and his candidature is screened through some set formulate and definite criteria known to one and all, in an open and transparent manner and after this initial screening in an open manner, each such advocate is asked to present himself before the Full Court which might examine and test the merit, acumen and ability of the person concerned so as this Hon"ble Court is able to finally arrive at a definite conclusion as regards the suitability of a candidate for senior advocate."

18. Sri Ashok Pandey therefore has put forth his grievance again on the same footing and has urged that the prima facie view expressed by the division bench in the order dated 2.8.2013 should be affirmed and the final relief as prayed for

should be granted.

19. He has also raised an issue relating to inappropriate classification of advocates in two sections, advocates and Senior Advocates, and describes it to be discriminatory creating a class within a class. He has also urged that consent should not be prior to the deliberations by the Full Court rather it should be simultaneous as soon as the Full Court decides to confer such a distinction and this according to him is possible by seeking consent at the time of the Full Court meeting itself by a Mobile Phone. The argument is that once a prior consent is taken then it would not be proper for the Full Court to refuse designation as consent implies the recognition of such distinction.

20. Sri Upendra Nath Mishra, learned counsel for the High Court on the basis of instructions received and the notifications issued from time to time has humbly submitted that the petition essentially questions the wisdom of the full court itself that has approved of the 1999 Rules and has been consistently following the same. He submits that the recommendation is not by any strangers but by eminent Senior Judges of the High Court, seven in number, which presupposes an objective and subjective consideration of the candidature for such recommendation, including his minimum eligibility which procedure he terms is not hit by any constitutional provision or the provisions of the Advocates Act, 1961. To the contrary, the recommendations are preceded by a spade work which has to be performed by the High Court for proceeding to assess the candidature of any advocate to be designated as a Senior Advocate and that requires sifting of valuable information about a candidate. This he contends has to be done as all the Judges of the High Court may not be required to sit together to gather facts. The Full Court has to express its opinion for which some basic exercise has to be carried out and which according to him is only supplementing the work of the full court and not supplanting it. These seven Judges are also part of the very same full court and their recommendations do not amount to truncating the power of the full court or curtailing it in any manner whatsoever.

21. He has invited the attention of the Court to Article 225 of the Constitution of India to urge that the High Court Rules 1952 have been framed in exercise of such constitutional authority and the rules provide for making provisions to regulate and permit any person to practice as an advocate which includes the right of practice of a designated senior advocate. In this context, if a rule has been framed for screening and recommending a candidate for being designated as a Senior Advocate, it presupposes an assessment of the practice of an advocate and the permission by the High Court to allow such practice on such terms as may be permissible under law.

22. The assessment of designation of a senior advocate is basically founded on his practice and standing at the bar as an advocate and therefore a rule providing for a seven judges recommending body is neither constitutionally invalid nor is it contrary to the provisions of the 1961 Act. He submits that this is

in consonance with the provisions of Section 16(2) read with Section 34(1) and hence the entire premise of the petitioners arguments to declare the entire rule as ultra vires is misplaced. He contends that merely because the procedure for recommendation is being criticized by the petitioner as resulting into injustice for deserving candidates like him there is no reason to declare the entire rule as ultra vires. He therefore submits that this assessment of designation as a senior advocate if preceded by a recommendation comes in aid to the exercise to be undertaken by the full court and therefore such a rule which advances the cause of the statutory provisions contained under Section 16(2) and Section 34(1) of the 1961 Act cannot be termed as ultra vires to the said provisions.

23. On the issue of guidelines he contends that the indications given under Section 16(2) have been further taken care of by defining the words standing at the bar under Rule 2(e) of the 1999 Rules and the petitioner has been unable to establish by any specific incident depicting violation of such guidelines either by any illustration or example, hence the contention that there is a complete absence of procedure for such consideration of designation is an incorrect argument. He submits that the information about such exercise being undertaken can always be regulated by notices issued, and which has been done and is being done even now, to make aware the candidates about the information that is required for such consideration, and on account of which large number of applicants have even for the current consideration sent their informations for being considered for recommendations. He therefore submits that no prejudice is being caused to any candidate and if any gap in any procedure is noticed that may be essential to make the rules workable, the High Court on the administrative side can always take appropriate steps for the same. This contention of the petitioner therefore about absence of procedure is not an available ground at all for striking down the 1999 Rules as ultra vires.

24. To appreciate the controversy some of the provisions are being extracted and made part of the judgment for convenience. Article 225 of the Constitution of India is reproduced here in under:-

"Article 225. Jurisdiction of existing High Court.--Subject to the provisions of this Constitution and to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by this Constitution, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the Judges thereof in relation to the administration of justice in the Court, including any power to make rules of Court and to regulate the sittings of the court and members thereof sitting alone or in Division Courts, shall be the same as immediately before the commencement of this Constitution:

[Provided that any restriction to which the exercise of original jurisdiction by any of the High Courts with respect to any matter concerning the revenue or concerning any act ordered or done in the collection thereof was subject immediately before the commencement of this Constitution shall no longer apply to the exercise of such jurisdiction.]"

25. The High Court Rules, 1952 have been framed in exercise of such powers and part of the rules concerning the present dispute as amended for designation of senior advocates, namely 1999 Rules, are extracted here in under:-

"PART VI-LEGAL PRACTITIONERS CHAPTER XXIV TO XXVI CHAPTER XXIV RULES FRAMED UNDER SECTION 34(1) READ WITH SECTION 16(2) OF THE ADVOCATE'S ACT, 1961 DESIGNATION OF SENIOR ADVOCATE RULES, 1999

1. Short title, extent and commencement:--(i) These Rules may be called "Designation of Senior Advocates Rules".

(ii) These Rules extend to the whole jurisdiction of the High Court of Judicature at Allahabad.

(iii) They shall come into force by notification from the date of its publication in the official Gazette.

2. Definitions:--In these Rules unless the context otherwise requires:-

(a) "Advocate" means an Advocate entered in any roll under the provisions of Advocates Act, 1961;

(b) "Court" means the same as defined in Rules of the Court, 1952;

(c) "High Court" means as defined in section 2(g) of the Advocate's Act 1961;

(d) "Roll" means the roll of Advocates prepared and maintained under the Advocate's Act, 1961;

(e) the term "Standing at the Bar" means the position of eminence attained by an Advocate at the Bar by virtue of his seniority, legal acumen and high ethical standards maintained by him both inside and outside the Court.

26. The aforesaid rules have been framed in exercise of powers of an Act made by Parliament, namely Advocates Act, 1961 that is relatable to Entry 26 List III (Concurrent List).

27. Section 16(2) and Section 34(1) are extracted here in under:-

"Section 16(2) An advocate may, with his consent, be designated as senior advocate if the Supreme Court or a High Court is of opinion that by virtue of his ability [standing at the Bar or special knowledge or experience in law] he is deserving of such distinction.

Section 34. Power to High Courts to make rules. (1) The High Court may make rules laying down the conditions subject to which an advocate shall be permitted to practice in the High Court and the courts subordinate thereto."

28. It is in this background of the rules and the provisions that the arguments advanced have to be understood vis-a-vis the parameters that have been described for designating an advocate as a Senior Advocate. For this a little bit of legislative history has also to be kept in mind.

29. The right to practice of pleaders, advocates and the like was governed by different sets of rules, regulations and enactments that were in vogue throughout the country at various levels of the judiciary. The need to streamline the judicial administration in the country was recognized and the law commission was assigned the job of suggesting reforms in judicial administration. The All India Bar Committee undertook its exercise and made recommendations way back in 1953. The outcome of the deliberations of the Law Commission and recommendations of the All India Bar Committee led to the introduction of a comprehensive bill in the Parliament and one of the main features of the bill was also the division of advocates into Senior Advocates and other Advocates, based on merit coupled with the integration of the bar into a single class of legal practitioners known as advocates throughout the country in every court. It was also recommended to establish an All India Bar Council and prepare a common roll of advocates having the right to practice throughout the country. The bill after being passed by both the Houses of Parliament received the assent of the President on 19th May, 1961 and came into existence as a statute entitled the Advocates Act, 1961. One of the peculiar facets of recognizing advocates as a class of legal practitioners found its voice in Chapter 4 of the 1961 Act which defines the right to practice. Section 29 acknowledges advocates to be the only recognized class of persons entitled to practice law. Section 33 mandates that unless a person is enrolled as an advocate under the 1961 Act, he cannot be allowed to practice in any court or before any authority or person. This is coupled with Section 30 where a right is conferred on advocates to practice throughout the territories to which the Act applies. This exclusive status of lawyers has been described as being compulsive in nature in a more subtle way by Jane Bryant Quinn in his view expressed in the Newsweek Magazine on 9.10.1978 in the following words:-

"Lawyers are . . . operators of toll bridges across which anyone in search of justice must pass. Jane Bryant Quinn Newsweek, October 9, 1978"

30. The word "Advocate" has been defined under Section 2(1)(a) as an Advocate entered in any roll under the provisions of this Act. Thus the right to practice is controlled under the Act and Section 34 in particular the High Court has been conferred special powers to make rules laying down the conditions subject to which an advocate can be permitted to practice in the High Court and the courts subordinate thereto. The provisions of Section 34 therefore empower the High Court to frame rules laying down the conditions subject to which an advocate shall be permitted to practice in the High Court or the courts subordinate to it. Thus the High Court has the authority to frame a rule by which permission to practice can be regulated in the High Court and the subordinate courts. This rule making power on the High Court has therefore been conferred to control the right of an advocate to practice under the conditions which may be prescribed under rules to be framed in this regard.

31. Then there is a separate chapter under the 1961 Act, namely Chapter III

which is in relation to admission and enrollment of advocates and Section 16 prescribes that there shall be two classes of advocates, namely Senior Advocates and other advocates. Section 17 provides the State Bar Council to maintain the roll of advocates and also the other provisions supplement making provisions for conditions of enrollment and disqualification as well as the power to frame rules in this regard.

32. The aforesaid background deserved to be stated, as, the right to practice is contained in a separate chapter after enrollment, but admission and enrollment has been provided for separately in Chapter III which includes the designation of an advocate as a Senior Advocate.

33. The exclusive right to practice law conferred on an advocate or a senior advocate therefore comes with responsibilities as a complete monopoly is created under the statutory provisions prescribing as to who can practice law before any court or authority. This peculiar and exclusive status of an advocate which includes a senior advocate brings in a host of responsibilities. Their primary duty is that of seekers of justice and sergeants in law authorised to plead for upholding the rule of law.

34. Lord Denning in his book "The Discipline of Law" Part Six Chapter 3 titled "The Impact of Hedley Byrne" has extracted a portion of his judgment in *Rondel Vs. Worsley* [1967] 1 QB 443 where he opines about the care and responsibility of an advocate in the following words:-

"As an advocate he is a minister of justice equally with the judge. He has a monopoly of audience in the higher courts. No one save he can address the judge, unless it be a litigant in person. This carries with it a corresponding responsibility. A barrister cannot pick or choose his clients. He is bound to accept a brief for any man who comes before the courts. No matter how great a rascal the man may be. No matter how given to complaining. No matter how undeserving or unpopular his cause. The barrister must defend him to the end. Provided only that he is paid a proper fee, or in the case of a dock brief, a nominal fee. He must accept the brief and do all he honourably can on behalf of his client. I say "all he honourably can" because his duty is not only to his client. He has a duty to the court which is paramount. It is a mistake to suppose that he is the mouthpiece of his client to say what he wants: or his tool to do what he directs. He is none of these things. He owes allegiance to a higher cause. It is the cause of truth and justice. He must not consciously mis-state the facts. He must not knowingly conceal the truth. He must not unjustly make a charge of fraud, that is, without evidence to support it. He must produce all the relevant authorities, even those that are against him. He must see that his client discloses, if ordered, the relevant documents, even those that are fatal to his case. He must disregard the most specific instructions of his client if they conflict with his duty to the court. The code which requires a barrister to do all this is not a code of law. It is a code of honour. If he breaks it, he is offending against the rules of the profession and is subject to its discipline. Be he cannot be sued in a

court of law.

"Such being his duty to the court, the barrister must be able to do it fearlessly. He has time and time again to choose between his duty to his client and his duty to the court. This is a conflict often difficult to resolve: and he should not be under pressure to decide it wrongly."

35. It is for this reason that when it comes to the assessment of a person to be designated as a Senior Advocate, his standing at the bar has to be assessed on the basis of how far and how good has the lawyer been in carrying out his responsibilities while contributing to the growth of law as a subject and to the growth of the profession. His exclusive responsibility as a seeker of justice therefore under the statutory provisions aforesaid by itself raise him to a very unique position of doing service to the public at large and to the institution of judiciary in particular.

36. The designation of a Senior Advocate envisaged under the rules is based on an opinion formed by the High Court about the ability, standing at the bar, special knowledge and experience in law. It is not a mere election by members. It is a selection of the best and not an exercise of likes and dislikes by the alignment of individuals. It is the best of experience, recognition of superior knowledge and place of special distinction in the legal fraternity that forms the basis of a collective opinion. For the purpose of conferring such distinction by designating an advocate as a Senior Advocate, the assessment about the ability of a lawyer can be his skill, his intellectual gifts, his aptitude, his ingenuity and his talent to display his legal acumen. The description of this personality of a lawyer has been described in the Canterbury Tales by Chaucer in Prologue as follows:-

"A sergeant of the law, wary and wise, There was also, full rich of excellence, Discreet he was, and of great reverence.

Chaucer Prologue The Canterbury Tales, c. 1380"

37. He should have a set of qualities of mind that include precision, caution, relevance, focus, resourcefulness, practicality, ability to make pertinent and sometimes startling distinctions, clear headed detachment, lack of sentimentality and prudent judgment. His presentable personality should reflect a complex mix of rigorous objectivity, precise articulation, sound judgment, sensitivity to precedent, insight, intuition, imagination and a host of other subtle and not so subtle attributes. An American educator, John W. Davis, quoting Daniel Webster has described one of the principal qualities of a lawyer in the following words:-

"As to setting forth the outstanding qualities of an advocate.....There is no doubt that Daniel Webster named the principal quality when he said, "The power of clear statement is the great power at the bar"

38. He should have the ability to accept ambiguity and not emotionally tied to a position with a further capacity to argue both sides and question everything. A

lawyer should possess a distinctive faculty of complex, nuanced judgment, delicately articulated to context - something akin to the practical wisdom celebrated by a long succession of thinkers beginning with Aristotle. He should be possessed of wisdom that defines a lawyer - statesman, the prudential wisdom that can resolve complex and intricate moral problems coupled with an outlook with a vision and the capacity to solve complex situations. (Extracted from the Chapter "thinking like a lawyer" of Law Talk by James E. Clapp, Elizabeth G. Thornburg, Marc Galanter and Fred R. Shapiro).

39. Some of the main characteristics of a truly qualified advocate have been described by Justice Warren E. Burger of the United States Supreme Court while delivering his Lecture at the Fordham University Law School in December 28, 1973 as follows:

"A truly qualified advocate - like every genuine professional - resembles a seamless garment, in the sense that legal knowledge, forensic skills, professional ethics, courtroom etiquette and manners are blended in the total person. There are some lawyers who scoff at the idea that manners and etiquette form any part of the necessary equipment of the courtroom advocate. Yet if one were to undertake a list of the truly great advocates of the past 100 years. I suggest he would find a common denominator: They were all intensely individualistic but each was a lawyer for whom courtroom manners were a key weapon in his arsenal. Whether engaged in the destruction of adverse witnesses or undermining damaging evidence or in final argument, the performance was characterized by coolness, poise, and graphic clarity, without shouting or ranting, without baiting witnesses, opponents or the judge.

Warren E. Burger Lecture, Fordham, University Law School, reported in the Los Angeles Times, December 28, 1973"

40. It is these traits if taken together impress upon a mind that an advocate possesses such distinguishing marks, that he can be capable of being rewarded with a distinction. It is this exceptional ability or eminence giving him a separate identity that marks out a man from his fellows. The prominence and the remarkable qualities places an advocate in an exalted position with superior abilities that makes him celebrated, respected, distinguished and illustrious. He thus stands elevated to a status which gives him distinction. His performance reflecting sharp intelligence that at times results in abrupt reversals distinguishes his personality from other lawyers. He in essence is possessed of superior knowledge and is not a mere strategist or manipulator of law. He is an exponent of the correct position of law and this is what makes him look exclusive amongst his own team of colleagues.

41. It is for this reason that Rule 2(e) of the 1999 Rules defines the term standing at the bar as follows:-

2(e) the term "Standing at the Bar" means the position of eminence attained by an Advocate at the Bar by virtue of his seniority, legal acumen and high ethical

standards maintained by him both inside and outside the Court.

42. In this background and in the context of Rule 2(e), the High Court has to undertake the process of collecting information and then forming an opinion about awarding such a distinction of a senior advocate on a deserving candidate. This function of gathering and collecting information has now been entrusted under Rule 3 of the 1999 Rules to a Seven Judges Committee the action whereof is being questioned and made the foundation for challenging the vires of the rules on the ground that this is impermissible in view of Section 16(2) of the 1961 Act.

43. The argument is that this entire function including elimination should be performed by the Full Court itself and not by any delegation or abdication of authority to this Seven Member Committee.

44. This argument has to be seen in the context of the nature of the exercise that has to be undertaken in order to assess a particular candidate about his standing at the bar as an advocate. If one goes through the various aspects that are required to be gone into for the purpose of such assessment, then apart from the conditions of eligibility further information is also warranted to be processed in order to locate essential virtues that are necessary in order to assess, as to whether a candidate deserves to be designated as a senior advocate or not, and whether he possesses such distinctive attributes for such consideration. This exercise of collecting information is also necessary, as at times, one discovers skeletons in the cupboard.

45. No doubt, the performance of a lawyer as an advocate inside court is one of the major factors but his entire personality as an officer of the court and his contribution to the cause of justice in general coupled with his personal traits of character require to be minutely observed and then a recommendation made for consideration of award of such distinction. This exercise in respect of candidates would not be practicable to be undertaken by all the Judges of the Court together and it is for this reason that in order to make this fact finding inquiry into the eligibility and prospective suitability of a candidate, that a committee of seven judges has been formed under Rule 3 to find out and accordingly project the correct facts about a candidate who is to be assessed for being designated as a senior advocate. The gathering and presentation of all essential information is thus a function entrusted to the committee. Sri Misra states at the bar that such a procedure is also followed in other High Courts like that in Madras, Bombay and Patna.

46. The purpose of forming of such a recommending body therefore has a clear workable and pragmatic purpose behind it and which has the sanction of the Full Court which has approved of the 1999 Rules. The Full Court has therefore not delegated its ultimate function, of either designating a candidate as a senior advocate or finally refusing to do so, to the seven member committee, but is rather dependent upon the information so collected for the purpose of such

assessment which is not only rational but is also in the interest of a candidate whose entire personality is screened coupled with all the information that is required for such an assessment by the Full Court. The purpose therefore of a Committee is to aid the Full Court with all facts that are necessary for such designation. The object therefore of a Screening Committee is to sieve the entire material that is necessary to be looked into for finding out a suitable candidate for designation. The utility and usefulness of the existence of the screening committee has been acknowledged as necessary for the smooth functioning of the selection process in Para 35 of the Full Bench (three judges) judgment in the case of Democratic Bar Association, Allahabad and others Vs. High Court of Judicature at Allahabad and another reported in 2000 (18) LCD 1047, extracted hereunder:-

"35.However, in our opinion, Screening Committee shall continue to serve useful purpose, its existence is necessary for proper and smooth discharge of the function by the Full Court under Section 16(2) of the Act. The Screening Committee at its level may approve or disapprove the recommendations made by the Hon"ble Judges on the basis of the material made available to it. However, the entire report of the Screening Committee may be placed before the Full Court, which only has the final power to decide as to which advocate deserves for being designated as senior advocate. It is incorrect to say that this minor modification in the functioning of Screening Committee shall defeat the purpose of its existence....."

47. Having stated the purpose and object of having a committee of seven judges, we may now turn to the legal submissions raised by the petitioner and the response given by the learned counsel for the High Court.

48. The first issue is as to whether Rule 3 of the 1999 Rules is ultra vires the provisions of Section 16(2) of the Advocates Act 1961. The vires of the rule has to be tested on the known legal grounds as to whether there was competence to frame such rules, whether the rules are ultra vires to any provisions of the Constitution of India and thirdly as to whether they are ultra vires the provisions of the Act under which they have been framed or contrary to any other law for the time being in force on the said subject. Rule 3 of the 1999 Rules have been framed in exercise of the powers under Section 16(2) read with Section 34(1) of the Advocates Act 1961. This issue was precisely raised as Question No. 3 quoted in Paragraph 16 of the Full Bench judgment of this Court in the case of Democratic Bar Association (supra). The Full Bench went on to examine the aforesaid provisions and it was held finally in Paragraph 22 thereof as follows:-

"22. The submission made by Shri Rajeshwar Singh, petitioner No. 2 and Shri Sunil Ambwani that designation as senior advocate under Section 16(2) has no connection with the right to practice, can also not be accepted. Under Section 49, clause (g). Bar Council of India has been conferred power to make rules and to prescribe the restrictions in the matter of practice to which senior advocate shall be subject. Section 16(3) of the Act also provides that senior advocate shall in

the matter of their practice, be subject to such restrictions as the Bar Council of India may in the Interest of the legal profession, prescribe. Thus, an advocate on being designated as senior advocate become subject to conditions and limitations, in the matter of practice prescribed by the Rules framed by the Bar Council of India and the designation as senior advocate is thus, has close nexus with the right to practice and High Court under Section 34(1) is fully competent to make Rules. Submission that High Court is not competent to make impugned Rules has no substance. This Court framed Rules under Section 34(1) read with Section 16(2) of the Advocate Act, 1961 on 28.2.1992 which were published in U.P. Gazette dated 9.5.1992. The authority of this Court to make Rules under the aforesaid provisions has never been questioned. It is settled principle that normally the opinion of the authority concerned that the rule made by it is necessary to carry out the purposes mentioned in the Act and when this opinion is recited in the preamble to the Rules, it should be greatly respected. In the preamble of the Rules, it is being mentioned from very beginning that they are being made under Section 34(1) read with Section 16(2) of the Act. We do not find any justification to doubt the authority of this Court to frame Rules."

49. Thus the power to frame rules have been acknowledged under the aforesaid provisions of the Advocates Act and it has been held that there is no justification to doubt the authority of the court to frame such rules.

50. The aforesaid power of the High Court to frame rules was once again a matter of consideration by a Full Bench of the Delhi High Court in the case of D.S. Chaudhary Vs. High Court of Delhi and another, Writ Petition No. 21618 of 2005, decided on 5.12.2008 and reported in ILR 2009 (III) Delhi 176. The Delhi High Court went on to accept the reasoning given by the Full Bench of the Allahabad High Court referred to hereinabove and quoted it with full approval in Paragraph 14 of their judgment which is extracted here in under:-

"14. Once it is not in dispute that the power lies with the High Court to designate an Advocate as a Senior Advocate, it automatically follows that in order to regulate that power, so that the same is exercised objectively, the power to make Rules would be inherent in it. When the Rules are framed under the rule making powers, as stipulated in Sections 28, 34, 49 etc. of the 1961 Act, those Rules would be statutory in nature. That would not mean that the authority which has to discharge a particular function under a particular provision would not be authorised to make the rules for better performance of its own authority. It is not necessary for us to decide in this writ petition as to whether such rules would be having statutory force or would be administrative nature. For our purpose it is sufficient to hold that even if it is treated that these rules are of administrative nature, power lies with the High Court under Section 16 of the 1961 Act to frame such rules. It is not necessary to dwell into this aspect in more detail as this very issue has already been discussed by the Allahabad High Court in the case of Democratic Bar Association, Allahabad and others Vs. High Court of Judicature at Allahabad and another, AIR 2000 All 300 : (2000) 3 AWC 2383(1) : (2000) 2

UPLBEC 1387 . Since we are in agreement with the interpretation of Section 16 of the 1961 Act, as given in the aforesaid judgment, our purpose would be served by extracting the following discussion therefrom:-

xx xx xx

From perusal of Section 16(2) of the Act, it is clear that High Court has to form an opinion about the ability, standing at the bar or special knowledge of experience in law of an advocate and when he is found deserving, he is designated as senior advocate. Process of forming opinion by Hon''ble Judges of this court is a continuous process based by the observation of the performance of the advocate in arguing cases before the judge concerned. Such kind of opinion cannot be formed except by long and sustained observation for year. Opinion forming process is thus, objective. However, it is expressed in subjective manner by designating an advocate as senior advocate or by refusing to confer this distinction. The expression is subjective as Hon''ble Judges are not required to assign any reasons for such refusal. Opinion-forming is objective as the concerned advocate appears, argues his cases and his performance regarding ability, standing at the Bar and his knowledge and experience of law is judged frequently by Hon''ble Judges. It cannot be disputed that function is necessarily administrative but it is statutory in nature. Whether such kind of statutory function, though administrative in nature, can be delegated. There is no doubt about the legal position that when any function is assigned to the High Court, the High Court means Hon''ble the Chief Justice and all his companion Judges. Normally administrative functions and powers can be delegated in favour of coordinate authority or to a subordinate authority. However, when administrative function is statutory in nature and the function or the power is assigned under the statute, it should be performed or exercised by that authority unless the power to delegate such function or exercise of power is specifically provided or may be inferred by necessary implication from the provisions contained in the statute. Learned counsel for the respondents could not lay his hand on any provision contained in the Act on the basis of which it may be said that High Court has been conferred specific power to delegate this statutory function contemplated under Section 16(2) of the Act."

51. The above quoted reasoning of the full bench correctly holds that to make a rule for effective advancement of powers to be exercised, is inherent in the authority. The same is logical and is equally sound in law.

52. The ratio of the two full benches, first being of our own court is binding and not only this, we have not been able to locate any constitutional infirmity that might reduce the authority of the aforesaid two judgments in any way whatsoever.

53. Sri Upendra Nath Mishra has stated at the bar that the aforesaid two judgments still hold the field and therefore there is no reason for us to take a different view about the authority of this Court to frame its rules. The seven

member committee is authorised under Rule 3 of the 1999 Rules which is a rule within the legislative competence of the High Court and it does not in any way contradict the provisions of Section 16(2) of the Advocates Act 1961 so as to hold it as ultra vires. It is even otherwise not hit by any constitutional provisions so as to invite invoking of a writ of certiorari to strike down the same.

54. Sri Pandey has raised an argument that this Court in the exercise of powers under Article 226 of the Constitution of India cannot declare law or make law as is envisaged under Article 141 of the Constitution of India for the Supreme Court. Thus the Full Bench decision quoted hereinabove is not law and is not binding on this Court and this bench is free to express its independent opinion and declare the law.

55. He further submits that the present rules as existing were not under challenge or under consideration before the Full Bench and therefore also the said full bench decision would not be a binding precedent.

56. We may at the very outset clarify that the arguments which have been advanced are basically the same in relation to the delegation of the function of scrutiny by a Committee of Judges as was before the full bench. The fundamental principle that has been put to challenge is almost identical as was advanced before the Full Bench, namely that any such rule would be ultra vires the provisions of Section 16(2) of the 1961 Act. Thus the arguments are clearly parimaterial and the full bench dealt with the same subject matter even though the present rules were amended in the year 2010 bringing in the procedure of recommendations by a seven member committee. Thus there is no substantial difference in the legal issue that has been raised in the present writ petition and that was before the full bench. The same is the position with the full bench decision of the Delhi High Court which is of an equal persuasive value. Thus a legal issue having been decided by a Larger Bench has to be respected within the framework of discipline of law and we have found no reason to differ with the view taken in those decisions. Thus the aforesaid full bench decision still remains a binding precedent and is further supplemented by the additional views expressed by the full bench of the Delhi High Court with which we find ourselves in agreement with. The law therefore laid down therein does bind us and the argument of the petitioner on this score is unacceptable.

57. Coming to the other dimension that this Court does not have the authority to declare law as is available with the Supreme Court under Article 141 of the Constitution of India, we have fortunately come across a very informative academic Article penned down by none else than an illustrious Judge of this Court, Justice Brijesh Kumar who was later on elevated to the Supreme Court who contributed the same to one of the journals of the JTRI - First Year, Issue - 2 - Year - April - June, 1995, the extract whereof is quoted here in under:-

OF PRECEDENTS

Justice Brijesh Kumar Senior Judge, Allahabad High Court, Lucknow Bench

"Precedents", also called rulings, are searched and cited at the Bar and analyzed and scrutinized in Courts, throughout the proceedings, so much as that, it has become a matter of routine in the system. Undoubtedly, however, this routine exercise plays a very important part in decision making process in the system of dispensation of justice. It is safer to tread a tried path, is not the only consideration, but many others too, behind the sanction of the doctrine of precedents.

It is endeavour of any civilized society to be governed by rule of law. It necessarily requires "law". Precedents have been recognized as one of the sources of law. Judges make law is now an acknowledged concept. A reference on the point may be made to a decision, reported in Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, AIR 1991 SC 101 : (1991) 1 CompLJ 1 : (1990) 3 JT 725 : (1991) LabIC 91 : (1991) 1 LLJ 395 : (1991) 1 SCC 600 Supp : (1990) 1 SCR 142 Supp : (1991) 1 SLJ 56 . Precedents are one of the sources of law, is found to be held in All India Reporter Karamchari Sangh and Others Vs. All India Reporter Limited and Others, AIR 1988 SC 1325 : (1988) 2 CompLJ 559 : (1988) 2 JT 244 : (1988) LabIC 1060 : (1988) 1 LLJ 551 : (1988) 1 SCALE 990 : (1988) 3 SCR 774 : (1988) 70 STC 349 : (1988) 2 UJ 170 . An important limb of "Rule of Law" is the even application of laws. By following precedents this object of "Rule of Law" is also achieved.

An important feature of the administration of justice is that "like cases should be decided alike", to avoid any kind of discrimination in the matter of application of laws in similar cases, though may be decided by different Courts in any part of a State or the country. It is possible only through binding judicial pronouncements.

As a matter of public policy, it is also important that there must be some degree of certainty in the laws so that people may conduct their affairs and plan their future accordingly. In one of the decisions reported In Ram Manohar Lohia and Others Vs. State of U.P. and Others, AIR 1968 All 100 : (1968) CriLJ 281 , it has been observed that it is necessary to maintain judicial uniformity and judicial discipline. Precedents maintain judicial uniformity and judicial discipline by which disharmony in the application of laws is shell avoided. The observations made in one of the English decisions clearly highlight the importance and use of precedents. The following observations were made by Lord Gardener LC In Davis v. Johnson, (1978) 2 WLR 182:

"their Lordships regard the use of Precedent as an Indispensable foundation, upon which, to decide, what is the law and its application to Individual cases. It atleast provides some degree of certainty upon which Individuals can rely in the conduct of their affairs as well as a basis for orderly development of legal rules."

Broadly speaking, doctrine of precedents, to a great extent advances the cause of rule of law, the Ingredients of which as envisaged by Dicey have been construed to mean-

"Thus the law affecting individual liberty ought to be reasonably certain or

predictable; where law confers wide discretionary powers there should be adequate safeguards against their abuse; like should be treated alike and unfair discrimination must not be sanctioned by law; a person ought not to be deprived of his liberty status or any other substantial Interest unless he is given the opportunity of a fair hearing before an impartial tribunal." (De Smith-Constitutional and Administrative Law; 6th Edition; Page 19)

Yet another important aspect of binding precedent is that in most of the judicial systems, there is hierarchy of Courts, that is to say, the Original or the Trial Court, the Appellate Court, Revisional Court etc. For working of such a system it is necessary that judgments of the higher Courts are followed unreservedly, otherwise, there may be a judicial chaos; each Court entirely going its own way. In this connection, observations made in 1972 AC 1027, *Caspel CO. Ltd. v. Broome*. May usefully be quoted, which read as follows:

"..In hierarchal system of Courts. It is necessary for each lower tier to accept loyally the decision of the higher tiers. It is inevitable in hierarchal system of Courts that there are decisions of Supreme Appellate Tribunal which do not attract the unanimous approval of all members of judiciary. But judicial system only works if some one is allowed to have the last word, which once spoken, is loyally accepted."

Earlier, it appears there has not been any statutory provision about the binding nature of the decisions of the Courts. The only sanction was through the decisions of the Court. In *(Kuar) Mata Prasad and Another vs. (Kuar) Nageshar Sahai* AIR 1925 272 (Privy Council) , it was held that law laid down by the Privy Council was applicable with binding force upon all Courts in India. Later, in the two decisions of the Nagpur High Court, namely, *D.D. Bilimoria, Electric Contractor vs. Central Bank of* AIR 1943 340 (Nagpur) ... and *D.D. Bilimoria, Electric Contractor vs. Central Bank of* AIR 1943 340 (Nagpur) , it has been held that binding nature of precedent is an unwritten rule based on judicial comity. In the meantime the Government of India Act, 1935, Section 212 provided for the binding nature of the decisions of the Federal Court and the Privy Council upon all Courts, and ultimately doctrine of precedents received Constitutional recognition under Article 141 of the Constitution of India while providing that the law declared by the Supreme Court shall be binding on all courts and tribunals within the territory of India. The law laid down by the Supreme Court is binding on all Courts and tribunals of the Country. In *Union of India and others Vs. Kantilal Hematram Pandya*, AIR 1995 SC 1349 : (1995) 70 FLR 1023 : (1995) 2 JT 365 : (1995) 2 LLJ 659 : (1995) 1 SCALE 708 : (1995) 3 SCC 17 : (1995) 2 SCR 71 : (1995) 3 SLJ 130 : (1995) 1 UJ 787 , where the Central Administration Tribunal noticed the decision of the Supreme Court, but without indicating any distinguishing features on facts of the case before it failed to follow the same, the approach of the Tribunal did not receive the approval of the Court.

So far the decisions of the High Courts are concerned there has not been any specific provision under the Government of India Act, 1935 nor in the

Constitution of India, like Article 141. This question was considered by Hon"ble the Supreme Court in one of the decisions reported in East India Commercial Co. Ltd., Calcutta and Another Vs. The Collector of Customs, Calcutta, AIR 1962 SC 1893 : (1983) 13 ELT 1342 : (1963) 3 SCR 338 . The Supreme Court, on consideration of Articles 215, 226 and 227 of the Constitution of India came to the conclusion that the cumulative effect of the above noted provisions of the Constitution is that the decisions of the High Court have binding effect upon the subordinate judiciary and the tribunals.

58. His Lordship in the said article has mentioned the decision in the case of All India Reporter Karamchari Sangh and Others Vs. All India Reporter Limited and Others, AIR 1988 SC 1325 : (1988) 2 CompLJ 559 : (1988) 2 JT 244 : (1988) LabIC 1060 : (1988) 1 LLJ 551 : (1988) 1 SCALE 990 : (1988) 3 SCR 774 : (1988) 70 STC 349 : (1988) 2 UJ 170 . The Apex Court while considering the importance of law reports, went on to directly touch upon this fundamental issue which has been advanced by Sri Pande. To our humble understanding and knowledge the law laid down therein still holds the field and no fundamental change in the said view has either been brought to our notice or is otherwise available. We may therefore quote the extract of Para 11 of the said judgment which is in the following terms:-

".....Article 141 of the Constitution provides that the law declared by Supreme Court shall be binding on all courts within the territory of India. Even apart from Article 141 of the Constitution the decisions of the Supreme Court, which is a court of record, constitute a source of law as they are the judicial precedents of the highest court of the land. They are binding on all the courts throughout India. Similarly the decisions of every High Court being judicial precedents are binding on all courts situated in the territory over which the High Court exercises jurisdiction. Those decisions also carry persuasive value before courts which are not situated within its territory. The decisions of the Supreme Court and of the High Courts are almost as important as statutes, rules and regulations passed by the competent legislatures and other bodies since they affect the public generally. It is well-known that the decisions of the superior courts while they settle the disputes between the parties to the proceedings in which they are given they are the sources of law in so far as all others are concerned....."

59. We think that Mr. Pande would not ask us to take a different view and would be satisfied with the aforesaid complete answer to the proposition advanced by him where it has been held that precedents are a source of law that has been declared by a superior court including the High Court. We therefore find no substance in the argument advanced by Sri Pande to that effect.

60. Then comes the issue which is the main contention of Sri Pandey that a seven member committee cannot perform the function of the Full Court which is authorised to either accept or eliminate a candidate for designation as a senior advocate. This issue is also no longer res-integra and has been clearly answered

by the Full Bench decision in the case of Democratic Bar Association (supra), where Question No. 1 was framed by the Full Bench in Paragraph 16 and has been answered in Paragraph 23 onwards clearly holding that the Full Court is authorised to make rules to the extent that a Screening Committee at its level may send its recommendation either by way of approval or disapproval but the entire report of the Screening Committee has to be placed before the Full Court which only has the final power to decide as to which advocate deserves for being designated as a senior advocate. It has thus been clearly held by the full bench that the ultimate power is of the Full Court and the Screening Committee has to submit its entire exercise before the Full Court for such consideration. To our mind, also the recommendation of a few advocates by a seven member committee would not result in automatic elimination of those advocates who have not been recommended for being designated by the seven member committee. If the ultimate authority to designate is with the Full Court then the same logic applies to rejection as well. Rule 3 itself uses the words Full Court for consideration of such recommendation.

61. Sri Upendra Nath Mishra on the basis of instructions received has categorically argued that the deliberations to be undergone by the seven member committee is not an exercise authorizing elimination from consideration by the Full Court. The Full Court can still call upon the candidature of any advocate which it finds to be suitable for conferring the status of a Senior Advocate even if the name has not been recommended by the seven member committee. The Full Court in our opinion also does not become functus officio in respect of such candidates who have not been recommended by the seven member committee. If this is accepted then this would amount to denuding the statutory power conferred on the High Court and in its turn to the Full Court to designate an advocate as a Senior Advocate. Not only this, from another angle also, once a person is designated as a Senior Advocate, the 1999 Rules provides for recall of such designation on violation thereof which clearly establishes that the recommending body is only aiding the Full Court to take an appropriate decision and is not an authority to substitute the decision of the Full Court. These aspects have been clearly dealt with in the Full Bench judgment of Democratic Bar Association (supra) which still holds the field. There is neither surrender of jurisdiction by the Full Court nor the function assigned to the committee suffers from excessive delegation. The rule therefore is not excessive legislation.

62. The statute or the rule does not indicate an authority to delegate or abdicate the essential function by the Full Court, nor Rule 3 of the 1999 Rules in any manner can be read as such. The preliminaries, as a primary function by the seven member committee under the said rule cannot be construed as giving the final call to the selection process. That is retained under the rule itself with the Full Court. Reading it otherwise would be to attempt a violation of the rules of interpretation and to give the rule a meaning which it otherwise is not possessed of. Rule 3 fills in the gap and does not overreach Section 16(2) of the 1961 Act. It does not even partially or remotely dent into the decisive powers of the Full

Court so as to construe a loss of authority of the Full Court. Neither the rule abandons the role of the Full Court nor we find any reason to give it a different interpretation. We have carefully gauged the rule on the strength of literal and purposive rules of interpretation to arrive at the above-narrated conclusions. We would therefore firmly adopt the phrase "the authority is authorised to make the rules for better performance of its own authority" spelt out by the Delhi High Court Full Bench judgment in D.S. Chaudhary's case (supra) to define the role entrusted to the seven member committee that does not undermine, and rather strengthens, the discharge of obligations by the Full Court. The valuable inputs of the recommendations of the committee are not to be construed as an empty formality and is rather contemplated by the rules as a responsible exercise of authority with positive suggestions. It neither does a favour nor is it an elimination as apprehended by the petitioner. It is information to the house to arrive at a perfect decision by sorting out the choicest and not a role of final predetermination.

63. There is yet another reason which can be spelt out from the rules it self. The rule requires that the decision of the Full Court shall be taken by exercising the right of casting votes by the members of the Full Court through secret ballot. It is this ultimate exercise through a process of voting of all the members of the Full Court that a designation would be permissible if the candidate succeeds in getting the majority of the votes as prescribed under the rules. This collective opinion forming by the Full Court therefore cannot be substituted by a seven member committee.

64. The delegation of the function of scrutiny and recommendation of candidature is not surrender of authority by the Full Court nor does it amount to any abdication. Rule 3 of the 1999 Rules, tested from any angle is not ultra vires. It aids the function of the Full Court and does not impinge upon its ultimate statutory control over the deliberations. The recommendation by the Committee is a valuable suggestion as it rests on an objective exercise to sort out and identify the most deserving candidates. Applying the rules of purposive interpretation, that can be safely invoked in the present matter, we find ourselves justified in pressing into service the intention - seeker principle, and from the observations made throughout in this judgment that have been supported by reasons, we can firmly say that the rules clearly fulfill the purpose of a genuine deliberation by the Full Court with the aid of a smaller committee. To question the wisdom of the rule making authority in adopting such rules therefore does not stand to reason. The constitutional and statutory anvil on which we have scrutinized the facts of this case as disclosed in the petition, we have not found any basis or illustration so as to presume that the procedure to designate is either arbitrary, capricious or whimsical.

65. For all the reasons given hereinabove and hereinafter, the rule conferring an authority to recommend on a seven senior judges committee appears to be an indispensable provision in the given circumstances looking to the onerous task of

sifting extensive information about a fairly large number of candidates, and is therefore a compulsive legal necessity which even otherwise as explained is lawfully sustainable.

66. This being the position of the rule itself and the same being the position in law and the stand taken by the learned counsel for the High Court being no different, we fail to find any rule of interpretation to strike down Rule 3 of the 1999 Rules or any of the other rules as being ultra vires. The purpose of the rule therefore clearly is to authorize a basic foundational homework by a seven judges committee to guide the Full Court in its exercise of ultimate power of either conferring or refusing to confer such a designation. The rule as such therefore does not suffer from any infirmity, nor any other rule of the 1999 Rules has been put to specific challenge so as to gather any impression of it being ultra vires the provisions of the Advocates Act 1961 or any provision of the Constitution. The relief therefore prayed for striking down the rules for all the aforesaid reasons and not to give effect to them is declined. On an assessment of all the legal provisions and the arguments advanced, we see no reason to entertain any presupposition of the rules being ultra vires. The prima facie view expressed in the interim order passed in this case on 2nd August, 2013 therefore is resolved. There is no reason therefore to adopt a sealed cover method, as in service jurisprudence, inasmuch as, this is a matter of conferment of a distinction and not a declaration of a right. A name has to be considered and if rejected, the same cannot be kept alive for two years. The Full Court has authority to take its decision thereon and for this no interim order was required.

67. The apprehension expressed by the petitioner that the names of all the candidates would not be placed before the Full Court is therefore without any basis. In view of the submissions raised by Sri Upendra Nath Mishra, learned counsel for the High Court as noted hereinabove, has allayed these misapprehensions by categorically stating that whatever exercise is undertaken in respect of the applicants by the recommending body of seven judges committee the same shall be placed before the Full Court for its final consideration. This also removes the doubt that had occurred in the mind of the division bench while passing the interim order referred to hereinabove. If a candidate is otherwise ineligible or has been considered and not voted for designation his name cannot be kept alive in view of the clear statutory bar for a period of two years as envisaged under the 1999 Rules. The interim order dated 2.8.2013 therefore deserves to be discharged with liberty to the Full Court to take any appropriate decision in the matter.

68. The petitioner has advanced yet another argument about the absence of specific procedure either under the rules or otherwise for inviting applications and for processing the names and the criteria to be adopted for recommendations to be made by the seven judges committee. The submission appears to be that in the absence of rules, the powers are uncanalised and unbridled hence there is a reasonable ground to presume arbitrariness as

enshrined under Article 14 of the Constitution at the hands of the High Court.

69. We have considered the submissions raised and we have also heard the learned counsel for the High Court and find that sufficient notice was circulated and there is no material to indicate that any aspirant could not know about this exercise being undertaken for designation. Sri Mishra has pointed out that the Full Court is now again processing such candidates who are more than 130 in number for consideration of such designation and this by itself indicates that the notices that have been published in the cause list and have also been affixed at prominent places both at Allahabad and Lucknow, is sufficient information to the aspirants for which no grievance can be raised about the procedure in this regard.

70. We may put on record that the procedure which has been provided inheres in it to rationalize a method for collecting information for scrutinizing the eligibility and all other information that may be required for assessing the candidature of an advocate for being designated as a Senior Advocate. It is not the case of the petitioner that any such criteria being adopted is irrational or violative of Article 14 of the Constitution of India or any of the provisions of the 1961 Act or the 1999 Rules. It is even otherwise presumptuous to assume that a seven judges committee of the Senior Judges of the High Court would not deploy a rational method for collecting information and making recommendations. There is no material also to establish that any such defective process was followed or is being followed that may give rise to a reasonable apprehension of any arbitrariness in the process adopted for rationalizing the information in respect of the prospective candidates for designation. Apart from this, the rule cannot be struck down as arbitrary unless it is firmly established that the process so followed has resulted in failure of the obligation to be discharged by the seven member committee under the rules.

71. One of the arguments advanced by Sri Pandey is that the very classification of Advocates into an Advocate and a Senior Advocate is unreasonable. This was only an oral submission which has been noted by us, but the answer to the same has been given by the decision of a division bench of the Patna High Court that has been cited by Sri Mishra, learned counsel for the High Court, where this issue of classification of Advocates has been described as a reasonable classification clearly holding that it is a designation within the profession and is not a conferment as title so as to violate Article 18 of the Constitution of India. It is not necessary to further dilate on the said issue as the full text of the judgment takes care of the said submission of the petitioner and we find ourselves in agreement with the same.

72. Another argument that has been advanced by Sri Pandey has also been answered by the said division bench of the Patna High Court relating to the taking of a consent from an Advocate prior to his designation as a Senior Advocate. The Bench has explained that the purpose is necessary because the moment an Advocate is designated as a Senior Advocate, he would be put under restrictions or it may be that a person may not like to become a designated

Senior Advocate because he may not be chained and would like to remain free from such restrictions. The Chief Justice and the Judges while taking up the case voluntarily are obliged to take consent of an Advocate. The consent is not required on account of an application made by the candidate, but it further demonstrates that the candidate is agreeable to the conferral of such distinction and designation. The said judgment is reported in Jan Chaukidar (Peoples Watch) Vs. Union of India (UOI) and Others .

73. Sri Pandey has urged that the consent should not be prior and should be simultaneously obtained upon the decision of the Full Court to confer such distinction for which purpose recourse can be taken to communicate with a Mobile Phone during the deliberations itself. The reason for such a suggestion could not be countenanced by us but what Mr. Pandey says is that once consent is taken then there should not be any resiling back by the Full Court in awarding such distinction.

74. This argument has only to be noted for being rejected for all the reasons given hereinabove as the purpose of consent is not to crystallize any right in favour of a candidate so as to enable him to demand compulsory conferment. The consent is clearly for the purpose as explained hereinabove. Sri Pande did not fall short in his expression of freedom of speech by moving further and contending that such consents become meaningless as the candidate is left in a lurch about his destiny and for that he has orally submitted that such a procedure for elevation as a Judge is equally meaningless. He submits that once a consent is taken that amounts to a recognition of his worthy candidature and therefore this process of selection should not disrespect the consent so given by a candidate. We cannot appreciate this argument for the simple reason that the illustration of the elevation of a Judge through the deliberations of a collegium is an entirely different constitutional function which is for an appointment of a Judge as a constitutional authority. In the instant case, it is a conferment of a privileged distinction as a mark of recognition of a lawyer upon an assessment of his standing at the bar. The legal parameters of these two processes are therefore distinctly different as a Senior Advocate upon designation is a seeker for justice and assists a court presided over by a Judge who is a dispenser of justice. In our opinion, this would be comparing uncomparable procedures. We do not wish to nor is it necessary to compare the status of the two offices and we confine ourselves only to the limited issue of observing that these two nature of transactions, one being purely constitutional and the other being under a statute for designation and distinction, cannot be put at par together.

75. There is another issue that deserves mention as the petitioner has questioned the correctness of the procedure adopted for such designation. The dimensions of eligibility and suitability are both involved as statutory rules have been framed and certain guidelines are being followed for assessing the candidature for designation. Can that part of the procedure which assesses the suitability of a candidate be justiciable? The existence of statutory provisions

obligates a judicial scrutiny on a challenge raised but that in our opinion can be limited only to rules of procedure for adjudicating essential eligibility conditions and matters arising out of constitutionally permissible challenges on any doubt in this regard. So far as suitability is concerned, the said assessment is for a distinction where the highest body of a superior court sits and casts its opinion in favour of such designation or otherwise. The assessment of suitability by an august gathering of Judges in the Full Court, therefore, should not ordinarily be made subject to a scrutiny that may undermine the very wisdom of such selection. An opinion formed through a collective decision by no-one else than the Judges themselves should not be ordinarily made open to challenge on the judicial side on allegations about the subjectivity of such a decision. The full bench decision in the case of Democratic Bar Association (supra) in Para 29 thereof has clarified this in the following words:-

"29. From perusal of Section 16(2) of the Act it is clear that High Court has to form an opinion about the ability, standing at the Bar or special knowledge or experience in law of an advocate and when he is found deserving, he is designated as senior advocate. Process of forming opinion by Hon''ble Judges of this Court is a continuous process based on the observation of the performance of the advocate in arguing cases before the Judge concerned. Such kind of opinion cannot be formed except by long and sustained observation for years. Opinion forming process is thus, objective. However, it is expressed in subjective manner by designating an advocate as senior advocate or by refusing to confer this distinction. The expression is subjective as Hon''ble Judges are not required to assign any reasons for such refusal. Opinion-forming is objective as the concerned advocate appears, argues his cases and his performance regarding ability, standing at the Bar and his knowledge and experience of law is judged frequently by Hon''ble Judges....."

76. Thus, we find that it is only within a restricted zone that such judicial scrutiny should be allowed to be made as is permissible in law and the conferment of a distinction should not be made a subject of ridicule on mere scurrilous remarks with a view to undo something which has been entrusted in good faith by the legislature to the supreme body of the State judiciary. We would therefore not allow a subjective criticism of such a decision to be made on the judicial side as it would not be befitting to permit such criticism about the collective decision of those who are experts in assessing the suitability of a candidate being designated or otherwise as a Senior Advocate except to the limited extent as indicated above.

77. Having covered all the submissions that have been advanced and for all the reasons stated hereinabove, we accept the contention of Sri Pande in relation to the ultimate powers of the Full Court as explained hereinabove and to that extent there does not appear to be any serious dispute between the parties as it is also supported by the reasons on that issue given by the full bench of our Court in the case of Democratic Bar Association (supra) and also all the reasons given by the

full bench of the Delhi High Court in the case of D.S. Chaudhary Vs. High Court of Delhi (supra).

78. We however do not find ourselves persuaded on any count to declare the designation of Senior Advocate Rules, 1999 as existing today to be ultra vires and we therefore decline the relief prayed for to strike down the aforesaid rules.

79. Accordingly, the interim order is discharged and the writ petition stands disposed of with liberty to the Full Court to proceed as per rules for consideration of the candidature of any advocate for being designated as a Senior Advocate or may refuse to do so at its discretion as explained above and any past or future transactions would be subject to any appropriate decision to be arrived at by the Full Court in its wisdom.