

(2015) 10 AHC CK 0115
In the Allahabad High Court
Case No : Misc. Bench No. 9441 of 2015

Asok Pande [P.I.L.]

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 08-10-2015

Acts Referred:

Advocates Act, 1961 — Section 16, 16(3), 30, 49(1)(g)
Constitution of India, 1950 — Article 132, 165, 76

Citation : (2015) 10 ADJ 349 : AIR 2015 All 214

Hon'ble Judges : Rakesh Srivastava and Dinesh Maheshwari, JJ.

Bench : Division Bench

Advocate : U.N. Mishra, for the Respondent

Final Decision : Dismissed

Judgement

1. By way of this petition, framed and styled as Public Interest Litigation, the petitioner, a practicing Advocate in this Court, has attempted to raise the question as to whether a designated Senior Advocate could function as a Law Officer of the Union or of the State. Besides the others, the petitioner has arrayed the present Attorney General for India as respondent no. 3; the present Solicitor General of India as respondent no. 4; and present Advocate General and two Additional Advocate Generals for the State of Uttar Pradesh as respondent nos. 5 to 7 respectively.

2. The petitioner would submit in paragraph no. 4 of the petition that he is bringing the following substantial question of law for consideration of this Court:

"Whether a senior advocate can function as a state law officer or the law officer of the Union of India by whatever name/designation their called?" (sic.)

3. The petitioner has submitted in this petition that Section 16 of the Advocates Act, 1961 ("the Act of 1961") provides for two classes of Advocates i.e., Senior Advocate and other Advocates; and the Supreme Court and the High Courts are authorized to designate the Senior Advocates with their consent and to frame the

rules in that regard. The petitioner has further referred to Sections 16(3) and 49(1)(g) of the Act of 1961 authorising the Bar Council of India to frame the rules governing the Advocates as well as Senior Advocates and then, has referred to the Bar Council of India Rules, 1975, particularly Chapter 1 of Part-VI thereof, laying down restrictions on Senior Advocates. With reference to these Rules of the Bar Council of India, the contention of the petitioner is that when a Senior Advocate cannot appear directly, cannot accept instructions to draft pleading or affidavits, cannot give advice on evidence, cannot do any drafting work of analogous kind, cannot be approached by a client directly and cannot be briefed or instructed by the client to appear directly in the Court, and is to pay reasonable fee to his assisting counsel, he cannot function as a Law Officer of the State because these restrictions cannot be adhered to by the Senior Advocate, if appointed by the Government. With reference to the above Rules and particularly clauses (b) (i), (c), (d) and (f) thereof, the petitioner would argue that in view of such specific prohibitions against drafting, advising and accepting briefs directly, a Senior Advocate cannot function as a Law Officer of the State; and he cannot function as Attorney-General, Advocate-General or Additional Advocate-General. It is further submitted that when a Senior Advocate cannot appear without an Advocate on Record in the Supreme Court or without an Advocate in Part II of the State Roll in any Court or Tribunal, appointment of a Senior Advocate as Advocate-General or Additional Advocate-General entails extra liability on the State to engage an assisting counsel who is to be paid fees by the Senior Advocate as required by clause (f) of the Rules aforesaid. The petitioner has also referred to the names of two Advocates, who were earlier holding the office of Chief Standing Counsel, but they resigned after being designated as Senior Advocate. The petitioner has submitted that the question of appearance of one of the Senior Advocates as Additional Advocate General in the Court on behalf of the State was raised in Writ Petition No. 4618 (M/B) of 2015 and as he was asked to file a proper application, hence is filing the present petition. The petitioner has prayed for the following reliefs:

"a) To issue a writ of mandamus directing the respondent no. 1 Union of India to remove the respondent no. 3 and 4 from the office of attorney General for India and Solicitor General of India respectively and to direct the respondent no. 2 State of Uttar Pradesh to remove the respondent no. 5,6 and 7 from the post of Advocate General and Additional Advocate Generals as being a senior advocate, these persons cannot function as law officer of the Union or the State.

b) To issue a writ of certiorari for quashing the appointment of the respondent no. 3 to 7 after summoning the same from the concerned respondents.

c) Issue any other writ, order or direction which this Hon"ble Court deem fit, proper and reasonable regarding this matter."

4. On taking up this matter and having gone through the record, we have posed a query to the petitioner appearing in person as to the specific prohibition whereby and wherefore a Senior Advocate cannot hold the office of the Attorney

General, the Advocate General or any other office so as to represent the Government concerned before the Court? In response, the petitioner frankly submitted that such a prohibition is not stated in specific words in the concerned Rules but contended that a conjoint reading of various clauses appearing in Chapter 1 of Part-VI of Bar Council of India Rules leads to the deduction that a Senior Advocate cannot be a Law Officer of the State. The petitioner has submitted that only for the want of specific words of prohibition that this writ petition is necessitated and by appropriate interpretation, the deduction would be that the Senior Advocate cannot be appointed as Law Officer of the State. The petitioner has also referred to certain privileges and facilities as extended and allowances as paid to the Law Officers of the State. According to the petitioner, in the present set up of Rules, the Senior Advocate designated by the Court cannot function as Law Officer of the State and, therefore, this writ petition deserves consideration.

5. Having given thoughtful consideration to the submissions made and having examined the record, we are not persuaded to entertain this petition.

6. Article 76 of the Constitution of India provides for an Attorney General of India in the following terms:

"76. Attorney-General for India.-(1) The President shall appoint a person who is qualified to be appointed a Judge of the Supreme Court to be Attorney-General for India.

(2) It shall be the duty of the Attorney-General to give advice to the Government of India upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the President, and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force.

(3) In the performance of his duties the Attorney-General shall have right of audience in all courts in the territory of India.

(4) The Attorney-General shall hold office during the pleasure of the President, and shall receive such remuneration as the President may determine."

7. Article 165 of the Constitution of India provides for Advocate General for the State in the following terms:

"165. Advocate-General for the State.-(1) The Governor of each State shall appoint a person who is qualified to be appointed a Judge of a High Court to be Advocate-General for the State.

(2) It shall be the duty of the Advocate-General to give advice to the Government of the State upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the Governor, and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force.

(3) The Advocate-General shall hold office during the pleasure of the Governor, and shall receive such remuneration as the Governor may determine."

8. The relevant part of Section 16 of the Act of 1961 providing for Senior and other Advocates could also be taken note of as under:-

"16. Senior and other advocates.--(1) There shall be two classes of advocates, namely, senior advocates and other advocates.

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

(3) Senior advocates shall, in the matter of their practice, be subject to such restrictions as the Bar Council of India may, in the interest of the legal profession, prescribe.

----"

9. Bar Council of India Rules as referred by the petitioner read as under:

"Senior Advocates shall, in the matter of their practice of the profession of law mentioned in Section 30 of the Act, be subject to the following restrictions:

(a) A Senior Advocate shall not file a vakalatnama or act in any Court, or Tribunal, or before any person or other authority mentioned in Section 30 of the Act.

Explanation: "To act" means to file an appearance or any pleading or application in any court or Tribunal or before any person or other authority mentioned in Section 30 of the Act, or to do any act other than pleading required or authorised by law to be done by a party in such Court or Tribunal or before any person or other authorities mentioned in the said Section either in person or by his recognised agent or by an advocate or an attorney on his behalf.

(b)(i) A Senior Advocate shall not appear without an Advocate on Record in the Supreme Court or without an Advocate in Part II of the State Roll in any court or Tribunal or before any person or other authorities mentioned in Section 30 of the Act.

(ii) Where a Senior Advocate has been engaged prior to the coming into force of the rules in this Chapter, he shall not continue thereafter unless an advocate in Part II of the State Roll is engaged along with him. Provided that a Senior Advocate may continue to appear without an advocate in Part II of the State Roll in cases in which he had been briefed to appear for the prosecution or the defence in a criminal case, if he was so briefed before he is designated as a senior advocate or before coming into operation of the rules in this Chapter as the case may be.

(c) He shall not accept instructions to draft pleading or affidavits, advice on

evidence or to do any drafting work of an analogous kind in any Court or Tribunal or before any person or other authorities mentioned in Section 30 of the Act or undertake conveyancing work of any kind whatsoever. This restriction however shall not extend to settling any such matter as aforesaid in consultation with an advocate in Part II of the State Roll.

(cc) A Senior Advocate shall, however, be free to make concessions or give undertaking in the course of arguments on behalf of his clients on instructions from the junior advocate.

(d) He shall not accept directly from a client any brief or instructions to appear in any Court or Tribunal or before any person or other authorities in India.

(e) A Senior Advocate who had acted as an Advocate (Junior) in a case, shall not after he has been designated as a Senior Advocate advise on grounds of appeal in a Court of Appeal or in the Supreme Court, except with an Advocate as aforesaid.

(f) A Senior Advocate may in recognition of the services rendered by an Advocate in Part-II of the State Roll appearing in any matter pay him a fee which he considers reasonable."

10. It is not in dispute that so far this Court is concerned, the Senior Advocates are designated under the Rules framed under Designation of Senior Advocate Rules, 1999 which provide, inter alia, that a Senior Advocate shall be subject to such restriction as the High Court or Bar Council of India or the Bar Council of State may prescribe. It has not been stated that the High Court or the Bar Council of the State has placed any such prohibition on any Senior Advocate against his accepting engagement as a Law Officer of the State or the Union.

11. We are unable to accept the interpretation, as sought to be put and deduction as sought to be drawn by the petitioner on the Rules aforesaid. True it is that a Senior Advocate cannot appear in the Court without an assisting counsel as per the requirement of the Rules but that by itself cannot be considered prohibitive on the Union or the State against appointing a Senior Advocate as its Law Officer. As to how the appearance of such a Senior Advocate as Law Officer of the Union or State in the Court is to be ensured is again a matter for consideration of the Government and Advocate concerned but it is too far-stretched to suggest that the Senior Advocate cannot be a Law Officer of the State.

12. So far the restrictions in clause (c) aforesaid are concerned, it is but clear that the restrictions are put on Senior Advocate that he would not accept instructions to draft pleadings or affidavits and he cannot do any drafting work of analogous kind in any Court or Tribunal or authorities mentioned in Section 30 of the Advocates Act or conveyancing work of any kind whatsoever. The Senior Advocate, however, is still entitled to settle any matter in consultation with an Advocate in Part II of the State Roll. Senior Advocate is not to advise on evidence

but it is difficult to accept that the Senior Advocate is otherwise prohibited from giving the necessary advice on legal matters. So far the pleadings are concerned, it is for the Union or the State to arrange its affairs as to the manner in which the pleadings are drafted and placed in the Court; and, even in that regard, a Senior Advocate is entitled to settle the pleadings.

13. So far clause (d) is concerned, the Senior Advocate has been put under restriction against accepting directly any brief or instructions to appear in any Court or Tribunal or before any person or authority. However, it is again too far-stretched to suggest that the prohibition against accepting directly any brief or instructions to appear in a Court on behalf of client could prohibit a Senior Advocate from taking any instructions whatsoever from the client.

14. We need not to dilate much further for the simple reason that under the Rules aforesaid, no such prohibition of accepting engagement by the Senior Advocate as a Law Officer of the State is seen. It is noteworthy that under Section 16 of the Act of 1961, an Advocate with his consent is designated as a Senior Advocate only when the Supreme Court or the High Court is of the opinion that by virtue of his ability, standing at Bar, or special knowledge or experience in the law he is deserving of such distinction. In the Rules of 1999, as framed by this Court, the standing at Bar has been defined as the position of eminence attained by an Advocate at Bar by virtue of his seniority, legal acumen and high ethical standards maintained by him both inside and outside the Court. It is, thus, clear that an Advocate gets designation as Senior Advocate by the Court in recognition of his ability, acumen and standard. This being the position of a Senior Advocate, in our view, the Union Government and the State Government are clearly entitled to consider and offer them appointment as Law Officers so as to ensure effective representation before the Courts. The suggestions as made by the petitioner, if accepted, would lead to an entirely unacceptable position that the State Government and the Union Government can never take the services of the Advocates of eminence for their purposes once they get designated as Senior Advocates. The suggestions, as made by the petitioner, are required to be and are rejected.

15. So far the suggestion of any particular resignation by any particular Advocate or any particular officer from any office is concerned, that by itself cannot be considered binding on any other Senior Advocate or the Government. The privileges and concessions, as given to the Law Officers by virtue of their office concerned, is again a matter between the Government and Law Officer and that hardly correlates with the issue sought to be raised in this petition. Such submissions seem to be entirely irrelevant.

16. In view of the above, the petition fails and stands dismissed.

17. The petitioner has prayed for certificate under Article 132 of the Constitution of India.

18. The prayer stands rejected.