

(2003) 05 JH CK 0002

In the Jharkhand High Court

Case No : Writ Petition (C) No. 4587 of 2002

Gidwar Aghan Oraon

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 13-05-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 24(4), 24(5)

Citation : (2003) 2 BLJR 1215 : (2003) 3 JCR 484

Hon'ble Judges : Vikramaditya Prasad, J

Bench : Single Bench

Advocate : S.B. Gadodia and Sumeet Kumar Gadodia, for the Appellant; R.S. Majumdar, G.A. and P.P.N. Roy, for the Respondent Nos. 3 and 4, for the Respondent

Final Decision : Dismissed

Judgement

Vikramaditya Prasad, J.—Heard the learned Counsel for the petitioner, State and respondent Nos. 3 and 4.

2. The question to be answered in this writ is whether a person whose name has been included in the panel for appointment of Public Prosecutor can be appointed as Additional Public Prosecutor?

3. The question aforesaid arose out of the facts that the District Magistrate, Gumla, prepared a panel after consultation with the District Sessions Judge and sent it to Government for appointment of Public Prosecutor for the district of Gumla vide Annexure-1. In that panel the names of Shri Bhairav Prasad and Shri Akhari Shrikant Prasad appear at serial No. 6 and 4 respectively but it appears that they were, in fact, appointed as Additional Public Prosecutors for the said district vide Annexure-2 of the writ. By now there is no dispute that the recommendations were not made on the basis of the consultation with the District Judge.

4. Section 24(5) of the Code of Criminal Procedure reads as follows :

No person shall be appointed by the State Government as the Public Prosecutor or Additional Public Prosecutor for the district unless his name appears in the panel of names prepared by the District Magistrate under Sub-section (4).

Sub-section 4 of Section 24 reads as follows :

The District Magistrate shall, in consultation with the Sessions Judge prepare a panel of names of persons, who are, in his opinion fit to be appointed as public prosecutor or Additional Public Prosecutor for the district.

Now a question arises whether two panels are required to be prepared, one for appointment of Public Prosecutor and another for appointment of Additional Public Prosecutor.

4. Public Prosecutor has been defined in Section 2(u) of the Code of Criminal Procedure which reads as follows :

2 (U) "Public Prosecutor" means any person acting under the direction of a Public Prosecutor :

5. Thus the Public Prosecutor will, definitely include the Additional Public Prosecutor also because the Additional Public Prosecutor has to work under the direction of the Public Prosecutor. Neither in Section 24(4) nor in Sub-section 5 there is any provision that there should be two district panels prepared one for appointment of Public Prosecutor and other for appointment of Additional Public Prosecutor, rather the word used in Sub-section 4 as well as in Sub-section 5 that the District Magistrate shall prepare a panel of the names for appointment of Public Prosecutor or Additional Public Prosecutor, So it does not distinguish between the Public Prosecutor or the Additional Public Prosecutor. The only thing is that when one becomes a Public Prosecutor he can instruct the Additional Public Prosecutor and the Additional Public Prosecutor has to work under his direction.

6. The practice of preparing two separate panels one for the Public Prosecutor and another for the Additional Public Prosecutor is simply a practice and not the rule. If there is no rule or law for preparing two separate panels one for the P.P. and another for APP then out of the panel prepared for the appointment of P. P. if persons are picked up for appointment of APPs also, the mandate of Sub-sections 4 and 5 of Section 24 of the Cr. P.C. is not violated. Practice cannot taken precedent over the Rule (Consequently if the appointment of the aforesaid two persons have been made out of the aforesaid panel for the appointment of P, P. it is not illegal.

7. So far the second prayer made in the writ for adequate representation of Scheduled Tribes in the matter of such appointment in accordance with the reservation policy is concerned, it is for the Government of Jharkhand to consider this aspect of the matter.

8. The writ is dismissed at the stage of admission itself.