

(2021) 05 OHC CK 0002

In the Orissa High Court

Case No : Writ Petition (Civil) Nos. 17009, 17110 Of 2019

Karunakar Jena And Others

APPELLANT

Vs

Orissa High Court, Represented Though Its Registrar General
And Others

RESPONDENT

Date of Decision : 10-05-2021

Acts Referred:

Constitution Of India, 1950 — Article 14, 141, 226, 227

Advocates Act, 1961 — Section 16, 16(2), 34

High Court Of Orissa (Designation Of Senior Advocate) Rules, 2019 — Rule 6, 6(1), 6(2), 6(3), 6(4), 6(5), 6(8), 6(9)

Citation : (2021) 05 OHC CK 0002

Hon'ble Judges : Chitta Ranjan Dash, J; Pramath Patnaik, J

Bench : Division Bench

Advocate : Bansidhar Baug, Sanjit Mohanty, I.A. Acharya, Gouri Mohan Rath, A.C. Panda, M. Agarwal, S.S. Padhi, S.D. Ray, P.P. Behera, A. Mishra, P. Ramakrishna Patro, A.K. Samal Debasis Nayak, A. Mishra, S.S. Rao, B.K. Mohanty, R.R. Jethi

Final Decision : Disposed Of

Judgement

C.R. Dash, J

1. Both these writ petitions have been filed by four Advocates. They have put in several years of practice in the High Court and other Courts. They aspire to be conferred with the designation of

â??Senior Advocateâ?. While the process of conferring designation of â??Senior Advocateâ? was on in accordance with Rule-6 of High Court of Orissa (Designation of Senior Advocate)

Rules, 2019 (â??2019 Rulesâ?? for short), the Honâ??ble Full Court conferred designation of â??Senior Advocateâ?? on five Advocates, who are Opposite Party Nos. 5 to 9.

2. Being aggrieved by such action of the Honâ??ble Full Court, both these writ petitions have been filed with the following prayers ;

(I) to quash the Notification No.1378, dated 19.08.2019 vide Annexure-8 declaring Opposite Party Nos.5 to 9 as â??Senior Advocatesâ?? ;

(II) to quash sub-rule-(9) of Rule-6 of â??2019 Rulesâ??;

(III) to issue direction to the Permanent Committee as well as the Honâ??ble Full Court of the High Court to consider the applications of Opposite Party Nos.5 to 9 along with other applicants named in the

Notice dated 09.08.2019 vide Annexure-7 for being designated as â??Senior Advocatesâ??;

(IV) In W.P.(C) No.17110 of 2019, one more prayer is added to quash the Notification dated 04.09.2019, which calls applications from eligible advocates for being designated as â??Senior Advocatesâ??.

3. Brief fact of the case is as follows :-

(a) Honâ??ble the Supreme Court on 12.10.2017 delivered the Judgment in the case of Indira Jaising vs. Supreme Court of India, (2017) 9 SCC 766 (Annexure-1). The Orissa High

Court, in exercise of the power under Section-16(2) read with Section-34 of the Advocates Act, 1961 and the guidelines framed by Honâ??ble the Supreme Court in the aforesaid Judgment

vide Annexure-1, notified â??2019 Rulesâ?? on 13.02.2019. (Annexure â?" 2)

The Orissa High Court thereafter through the Registrar (Judicial) issued an Advertisement inviting applications from the eligible Advocates to be conferred with the designation of â??Senior

Advocatesâ??. (Annexure â?" 3)

In response to the aforesaid advertisement, 50 applications were received, out of whom, Mr. P.K. Routray, Advocate has expired in the meantime and Mr. S.S. Rao has withdrawn his

application.

On scrutiny and perusal of the applications, the Permanent Committee (which includes Honâ??ble the Chief Justice and two Senior-most Honâ??ble Judges of the Court) placed names of

Opposite Party Nos.5 to 9 before the Honâ??ble Full Court for consideration of conferring them with designation of â??Senior Advocateâ? by invoking itâ??s suo motu power under sub-rule

(9) of Rule-6 of â??2019 Rulesâ??.

The Orissa High Court thereafter through the Registrar (Judicial) invited suggestions and views on 45 remaining applicants. (Annexure- 7)

(b) The Honâ??ble Full Court on 17.08.2019, unanimously Resolved to designate Opposite Party Nos. 5 to 9 as â??Senior Advocatesâ? in exercise of itâ??s suo motu power under sub-rule

(9) of Rule-6 of â??2019 Rulesâ?.

Notification was issued on 19.08.2019 by the Orissa High Court designating Opposite Party Nos.5 to 9 as â??Senior Advocatesâ??. (Annexure- 8)

After this stage, Mr. P.K. Routray expired and Mr. S.S. Rao withdrew his application. So there remained 43 advocates excluding opposite party Nos.5 to 9 to be considered for conferring

designation of â??Senior Advocateâ? on them.

On 04.09.2019, the Orissa High Court through the Registrar (Judicial) issued a fresh advertisement inviting applications from the eligible Advocates to be designated as â??Senior Advocatesâ?.

(Annexure -9)

Â (Annexures cited above are as per W.P.(C) No.17009 of 2019).

(C) Impugning conferment of the designation of â??Senior Advocateâ? on Opposite Party Nos.5 to 9 and issuance of Notification dated 04.09.2019 which calls for applications afresh from the

eligible Advocates after conferring designation of â??Senior Advocatesâ? on Opposite Party Nos.5 to 9, the present writ petitions have been filed with the prayers as delineated in paragraph-2

(supra).

4. Briefly stated, the counter affidavit filed by the Orissa High Court questions the locus standi of the petitioners to file the writ petition and its maintainability.

4.1. It is further asserted that the designation of â??Senior Advocateâ?, being not a â??bountyâ?, â??titleâ? or â??officeâ? and the applications of the petitioners for being designated as

â??Senior Advocateâ? being still pending as per the procedure enshrined in Rule-6 of â??2019 Rulesâ?, and the lis between the parties not being a Public Interest Litigation (PIL) or an

adversarial litigation, the writ petition is not maintainable being premature and the petitioners have no locus standi to call in question the action of the Honâ??ble Full Court.

4.2. It is further asserted that the Honâ??ble Full Court has rightly declared

Opposite Party Nos.5 to 9 as "Senior Advocates", in exercise of their suo motu power under sub-rule (9) of

Rule- 6 of the "2019 Rules" read with Section-16(2) of the Advocates Act. Hence, the writ petition should be dismissed.

4.3. Except Opposite Party No.6, no other private Opposite Party has filed counter affidavit. The Opposite Party No.6 in his counter affidavit has laid stress on the length of his practice in the

High Court and his standing in the Bar.

5. From the rival pleadings filed by the parties, the following points emerge for determination :

(I) Whether the petitioners have locus standi to maintain the writ petition ?

(II) Whether the Orissa High Court could have framed Rule in the form of "2019 Rules" incorporating sub-rule (9) of Rule- 6, which runs contrary to the guidelines/norms of Hon'ble the Supreme

Court for framing Rules as contained in paragraph- 73 of Indira Jaising case ? (Annexure " 1)

(III) Whether the direction of Hon'ble the Supreme Court in Indira Jaising case is binding on this Court, in view of Article-141 of the Constitution of India ?

(IV) Whether beginning of sub-rule (9) of Rule-6 with a non-obstante clause takes away the effect of "2019 Rules" from sub-rule (3) to sub-rule (8) of Rule-6 ?

(V) Whether the Opposite Party Nos.5 to 9, who had applied as per the "2019 Rules" along with the petitioners and others could have been picked by the Permanent Committee prior to the stage of sub-rule

(3) of Rule- 6 of the "2019 Rules" and could their names have been recommended for designation as "Senior Advocates" ?

(VI) Whether the Hon'ble Full Court for exercising the power under sub-rule (9) of Rule- 6 could have accepted the recommendation of the Permanent Committee before the stage of sub-rule (3) of Rule-6 to

declare Opposite Party Nos.5 to 9 as "Senior Advocates" without forming any independent opinion ?

6. Broaching the question of "locus standi", Mr. Sanjit Mohanty, learned Senior Counsel appearing for the Orissa High Court submits that, the designation of "Senior Advocate" is not an

"office" or "post", in which position only a limited number of persons can be accommodated. Relying on the case of Indira Jaising (2017) 9 SCC 766 (paragraph- 57), Mr. Mohanty

submits that the designation 'Senior Advocate' is hardly a 'title', it is a 'Distinction'; a 'Recognition'. Relying on paragraph- 70 of the said Judgment, Mr. Mohanty submits

that, only the most deserving and very best, who would be bestowed with the Honour and Dignity, can be designated as 'Senior Advocate'.

6.1. Relying on the case of National Lawyers' Campaign for Judicial Transparency and Reforms vs. Union of India, 2019 (5) SCALE: 588 (para- 15), Mr. Mohanty, further

submits that, designation as a 'Senior Advocate' is neither a 'bounty' nor a 'right'.

6.2. Mr. Mohanty further goes to submit that the petitioners cannot be termed as being aggrieved or having any locus standi to maintain the writ petition with regard to designation of Opposite

Party Nos.5 to 9 as 'Senior Advocates' because:

(I) the applications of the petitioners for being designated as 'Senior Advocates' are still pending.

(II) the impugned Notification dated 19.08.2019 designating the Opposite Party Nos.5 to 9 as 'Senior Advocates' does not operate as a decision against the petitioners, much less affects them.

(III) each applicant has their own interest which cannot be termed as rivals to each other.

(IV) there has been no discrimination.

(V) there is no inter-se seniority among the 'Senior Advocates'.

6.3. Mr. S.P. Mishra, learned Senior Counsel who appears for the Opposite Party Nos.5 to 9 has the same submissions.

7. Mr. Banshidhar Baug, appearing in person, submits that, he has put in 40 years of practice as Advocate of the High Court and different other Courts since 28.02.1981. He had the desire to be

considered along with other Advocates as 'Senior Advocate', but the Permanent Committee as well as the Hon'ble Full Court had arbitrarily, malafidely and illegally designated the

Opposite Party Nos.5 to 9 as 'Senior Advocates' by adopting pick and choose method and completely discriminated against the petitioner. It is submitted by him that the action of the

Permanent Committee and the Hon'ble Full Court is violative of Article-14 of the Constitution of India, '2019 Rules' and Section-16(2) of the Advocates Act. As the petitioner has

called in question the method of selection of Opposite Party Nos.5 to 9 as â??Senior Advocatesâ?, when his and othersâ?? applications are still pending, he has locus standi to question such

method and the writ petition filed by him and other three Advocates are maintainable.

Mr. S.S. Rao, learned counsel, who appears for the petitioners in another writ petition, has also adopted the same stand.

8. Mr. Baug relies on the case of Democratic Bar Association, Allahabad and others vs. High Court of Judicature at Allahabad and others, AIR 2000 Allahabad 300 and the case reported in

(2014) 14 SCALE: 141 in order to drive to home his points. The case of â??Democratic Bar Associationâ?, Allahabad (Supra) was a Public Interest Litigation (PIL). In the said case, locus

standi of the petitioner was challenged. The said writ petition was filed challenging the validity of amendment of Designation of Senior Advocates Rules, 1999 and Procedure evolved by such

Rules for consideration of Advocates for being designated as â??Senior Advocatesâ? under the Advocates Act. The writ petition was filed by the Lawyers practising in the High Court.

8.1. Honâ??ble Allahabad High Court held that, the writ petition is maintainable because such Lawyers practising in the High Court cannot be termed as busy bodies and intermeddlers, as they

have vital interest in the subject matter of the writ petition, more so, when it was not shown that, the petitioner had filed writ petition for any personal gain or private profit or political motive or

any such other oblique consideration.

8.2. In the case reported in 2014 (14) SCALE: 141, an interim order was passed by the Honâ??ble Karnataka High Court at Bangalore holding that, the appellant does not have locus standi to

file writ petition in public interest. Honâ??ble the Supreme Court had held that, the petitioner has locus standi, as some issues are to be considered by the High Court in the writ petition regarding

the Rules, Regulation, and guideline of conferring the designation of â??Senior Advocatesâ?. This case also was a PIL filed by an Advocate wherein, main prayer was issuance of a writ of

mandamus for framing new norms strictly in consonance with the provisions of Section- 16(2) of the Advocates Act, 1961 in the matter of designation of â??Senior Advocatesâ? and a writ of

certiorari was also sought for quashing the Notifications dated 30.06.2014 and 14.07.2014 whereby 15 nos. of Advocates had been designated as "Senior Advocates" by the High Court of

Karnataka.

9. The decisions relied on by Mr. Baug (Petitioner in W.P.(C) No.17009 of 2019) in the case of "Democratic Bar Association", Allahabad and others and (2014) 14 SCALE: 141 are not

applicable to the facts of the present case, as the writ petitions in both the aforesaid cases were PILs and it is settled law that, no rigid rule of locus standi can be applied to a Public Interest

Litigation. Hon'ble the Supreme Court, in the case of Janata Dal vs. Choudhury HS, (1992) 4 SCC 305, has permitted any person acting bona fide and having sufficient interest in maintaining

an action for judicial redress for public injury to put the judicial machinery in motion. However, only a person acting bona fide and having sufficient interest in the proceeding of Public Interest

Litigation will alone have a locus standi. A person prompted by personal gain or private profit or political motive or any oblique consideration has no locus standi.

9.1. In the first case relied on by Mr. Baug, an Advocate Body was the petitioner in the writ petition and in the second case, an Advocate was the petitioner in the writ petition and in both the

cases, public interest of the Advocates at large were espoused by the petitioners and question of locus standi was decided accordingly. In the present case, however, the petitioners in both the

writ petitions are espousing their private cause.

10. The petitioners in both the writ petitions are aggrieved by the fact that opposite party Nos.5 to 9 were picked for designating them as "Senior Advocates", when the process under Rule-6

of "2019 Rules" was on. The petitioners might be in know of the rule i.e., "2019 Rules", but they did not have any expectation that in the midst of the process under Rule-6, the Opposite

Party Nos.5 to 9 shall be conferred with the designation of "Senior Advocates" before opening of the process under sub-rule (3) of Rule- 6 and such action shall be taken up by invoking sub-

rule (9) of Rule-6 of "2019 Rules". Such an action was a surprise to them and lacks transparency.

10.1. We thoroughly agree with Mr. Sanjit Mohanty, learned Senior Counsel

appearing for the Orissa High Court that whatever he has submitted as enumerated in paragraphs-6, 6.1 and 6.2 of

this order are true and the present writ petitions are not usual adversarial litigations, but the petitioners being Advocates and being applicants for being conferred with the designation of

â??Senior Advocatesâ?, have an existing right to call the rule, i.e. â??2019 Rulesâ? in question, though they have applied for being designated as â??Senior Advocatesâ?. Designation as a

â??Senior Advocateâ? is not a â??titleâ? or â??officeâ? as ruled by Honâ??ble the Supreme Court. But it adds to the prestige of an advocate both in the Bar and society. It gives him an

exalted position in the eyes of the Court before whom he appears. It gives him a self-satisfaction about his achievement in the profession and in life. It adds a distinct feather to his cap already

feathered. Even after his death, he is remembered with adulation. The designation may not be a â??titleâ? but from the perspective of those on whom the designation of â??Senior Advocateâ?

is conferred, it is more than a â??titleâ?? in the trapping of a â??designationâ??.

10.2. We agree that the petitioners and the Opposite Party Nos.5 to 9 are not rivals so far as their claim is concerned. The petitioners may be conferred with the designation of â??Senior

Advocatesâ?? tomorrow after the process under Rule-6 of â??2019 Rulesâ?? is over. But being advocates they have a vested and existing right to call in question the rule which creates a separate

group within a particular group, more so, when such creation of group by invoking a particular rule is not in consonance with the guidelines of Honâ??ble the Supreme Court according to their

study and wisdom. The question of validity of sub-rule(9) of Rule-6 of â??2019 Rulesâ? being the subject matter of litigation now and the petitioners being alleged to have been discriminated by

that rule, it is not to be seen now as to whether a fundamental right of the petitioners has been violated. Only because the petitioners are applicants for their private cause, the doctrine of

aprobate and reprobate cannot be applied strictly to the facts of the case especially in view of the nature of the lis. Only and only the validity of sub-rule (9) of Rule-6 of â??2019 Rulesâ? has to

be examined to find out whether the same is in consonance with the guidelines of Honâ??ble the Supreme Court framed in Indira Jaising case irrespective of the

fact who brought the matter

before the Court. In our considered view, therefore, the petitioners have the locus standi to maintain the writ petitions.

11. Mr. S.P. Mishra, learned Senior Counsel appearing for Opposite Party Nos.5 & 7 to 9 raises the question of waiver on the part of the present petitioner on the ground that the petitioners in

both these writ petitions are precluded from challenging sub-rule (9) of Rule- 6 of the 2019 Rules, in view of their participation in the process of selection.

11.1. In this regard, Mr. Mishra, relied on the case of Madras Institute of Development Studies and another vs. K. Sivasubramaniyan and others, (2016) 1 SCC 454. In the aforesaid case, the

selection process was challenged by the unsuccessful candidates after participating in the selection process. Relying on a catena of decisions of its own, Hon'ble the Supreme Court held that,

such a stand by the petitioners after participating in the selection process acts against them and is hit by waiver and estoppel.

11.2. The case in hand is however different. The petitioners might be knowing the Rule, i.e. 2019 Rules, but they are aggrieved by the action of the High Court in the midst of the selection

process under Rule-6 of 2019 Rules and they have an existing right to challenge sub-rule (9) of Rule-6 as being violative of the guidelines enumerated by Hon'ble the Supreme Court in

paragraph- 73 of the Indira Jaising case. In view of our discussion supra and the nature of the lis, we do not think strict rule of 2019 Doctrine of waiver applies to the facts of the case.

12. Out of the points for determination that have been enumerated in paragraph-5 supra, point Nos.2 & 3 are important and basic. Those points are whether sub-rule(9) of Rule-6 of 2019

Rules is in consonance with the guidelines/norms framed by Hon'ble the Supreme Court in paragraph- 73 of Indira Jaising case and whether those guidelines/norms are binding in view of

Article-141 of the Constitution of India.

13. Mr. Baug, appearing in person and Mr. S.S. Rao, learned counsel appearing for the petitioners in another writ petition submit that, sub-rule (9) of Rule-6 giving suo motu power to the Court is

contrary to the guidelines framed by Hon'ble the Supreme Court in paragraph-73 of the Judgment in Indira Jaising case. They relied on paragraphs-

56, 57, 64, 66, 69, 70, 73 & 74 of the said

Judgment to substantiate their contention.

13.1. It is further submitted by Mr. Baug and Mr. Rao that the Judgment of Honâ??ble the Supreme Court in the case of Indira Jaising being positive and mandatory direction, the same is

binding on all Courts, in view of Article- 141 of the Constitution of India. To substantiate this point, they relied on the cases of State of Himachal Pradesh vs. Paras Ram and others, (2008) 3

SCC 655, Chandramohan Pandurang Kajbaje vs. State of Maharashtra and others, 2008 AIR SCW 619, Kalyani Packaging Industry vs. Union of India and another, (2004) 6 SCC 719 and

Suganthi Suresh Kumar vs. Jagdeeshan, AIR 2002 SC 681.

14. Relying on paragraphs- 58, 62 & 70 of the Judgment in Indira Jaising case, Mr. Sanjit Mohanty, learned Senior Counsel appearing for the Orissa High Court submits that sub-rule (9) of Rule-

6 of â??2019 Rulesâ? is valid and it is not contrary to the guidelines framed by Honâ??ble the Supreme Court in the said Judgment, inasmuch as Honâ??ble the Supreme Court in paragraph-

58 of the Indira Jaising case and paragraph-15 of the Judgment of National Lawyersâ?? Campaign for Judicial Transparency, 2019 (5) SCALE : 588 has held that, designation of advocates as

â??Senior Advocateâ? as provided in Section-16 of the Advocates Act, 1961 is valid and Constitutional.

14.1. It is further submitted by Mr. Mohanty, learned Senior Counsel that, in paragraph- 66 of the Indira Jaising case, it is stated that no reasons are recorded either for designation as â??Senior

Advocateâ? or rejection. Mr. Mohanty, learned Senior Counsel is vehement on the point that paragraph- 73 of the said Judgment cannot be read in isolation and it must be read along with

paragraphs- 58, 62 & 70. The suo motu power of the High Court has not been taken away in any sense and the suo motu power is a power vested by Section-16(2) of the Advocates Act, 1961.

According to him, the impugned rule is a valid rule and it is not at all contrary to the guidelines framed by Honâ??ble the Supreme Court in the said case.

15. Mr. S.P. Mishra, learned Senior Counsel, who appears for Opposite Party Nos.5 & 7 to 9 has the same answer. He also relies on paragraphs- 58, 62 & 70 of the Judgment in Indira Jaising

case and also relies on the Rule of Punjab & Haryana High Court, which provides for exercise of suo motu power.

16. We read the Judgment in Indira Jaising case in its entirety more than once. We found that earlier there were no uniform rules for conferring designation of 'Senior Advocates'. Different

High Courts were following different rules. There was also no proper rule on the subject for Hon'ble the Supreme Court of India. All the aforesaid rules of different High Courts including the

rule of this Court being followed prior to the Judgment in Indira Jaising case have been quoted by Hon'ble the Supreme Court in the said Judgment. Hon'ble the Supreme Court, after

taking into consideration different rules of different High Courts as well as that of Hon'ble the Supreme Court in paragraph-55 of the Judgment in Indira Jaising case, (2017) 9 SCC 766, took

into consideration the ingredients of Section- 16(2) of the Advocates Act, 1961. In paragraph- 56 towards the end, it is observed by Hon'ble the Supreme Court as thus :-

56. 'xxxxxxx So long as the basis of the classification is founded on reasonable parameters which can be introduced by way of uniform guidelines/norms to be laid down by this Court, we do not see how

the power of designation conferred by Section 16 of the Act can be said to be constitutionally impermissible.'

16.1. In paragraph- 57, it is held that, designation of 'Senior Advocate' is only a distinction and a recognition. In paragraph- 58, it is held thus :-

58. 'We, therefore, take the view that the designation of 'Advocates' as 'Senior Advocates' as provided for in Section 16 of the Act would pass the test of constitutionality and the

endeavour should be to lay down norms/guidelines/ parameters to make the exercise conform to the three requirements of the statute already enumerated hereinabove, i.e., namely, (1)

ability of the advocate concerned; (2) his/her standing at the Bar; and (3) his/her special knowledge or experience in law.'

16.2. In paragraph- 62 of the said Judgment, it is held thus :-

62. 'The power of designating any person as a Senior Advocate is always vested in the Full Court either of the Supreme Court or of any High Court. If an extraordinary situation arises requiring the Full

Court of a High Court to depart from the usual practice of designating an

advocate who has practiced in that High Court or in a court subordinate to that High Court, it may always be open to the Full Court

to so act unless the norms expressly prohibit such a course of action?|â?|â?|â?
|â??

16.3. Paragraph- 66 of the Judgment of the said case reads as follows :-

66. â??Both Section 16(2) of the Act and Order 4 Rule 2 of the Supreme Court Rules, 2013 are significant in the use of the expression â??is of opinionâ? and â??in their opinionâ?, respectively which

controls the power of the Full Court to designate an advocate as a Senior Advocate. It is a subjective exercise that is to be performed by the Full Court inasmuch as a person affected by the refusal of such

designation is not heard; nor are reasons recorded either for conferring the designation or refusing the same. But the opinion, though subjective, has to be founded on objective materials. There has to be a full

and effective consideration of the criteria prescribed, namely, ability; standing at the Bar, special knowledge or experience in law in the light of materials which necessarily have to be ascertainable and

verifiable facts.â??

16.4. Paragraph- 68 of the said Judgment reads as follows :-

68. â??What is merit? Is it the academic qualification or brilliance or is it something more? The matter has been considered earlier by this Court in K.K. Parmar v. High Court of Gujarat. Placing reliance on

an earlier view in Guman Singh v. State of Rajasthan it has been held that : (K.K. Parmar case, SCC pp. 801-02, paras 27-28)

â??27. Merit of a candidate is not his academic qualification. It is sum total of various qualities. It reflects the attributes of an employee. It may be his academic qualification. He might have achieved certain

distinction in the university. It may involve the character, integrity and devotion to duty of the employee. The manner in which he discharges his final duties would also be a relevant factor. (See Guman Singh v.

State of Rajasthan)

28. For the purpose of judging the merit, thus, past performance was a relevant factor. There was no reason as to why the same had been kept out of consideration by the Selection Committee. If a selection is

based on the merit and suitability, seniority may have to be given due weightage but it would only be one of the several factors affecting assessment of merit as comparative experience in service should be.â??

need for maximum objectivity in the process so as

to ensure that it is only and only the most deserving and the very best who would be bestowed the honour and dignity. The credentials of every advocate who seeks to be designated as Senior Advocate or

whom the Full Court suo motu decides to confer the honour must be subject to an utmost strict process of scrutiny leaving no scope for any doubt or dissatisfaction in the matter.â?? (Emphasis supplied by us)

17. We thought it proper to quote the aforesaid paragraphs relied on by learned counsels for the parties not to leave any doubt in their mind and our mind so far as the understanding of the

Judgment is concerned. It is settled in law that, a Judgment is never interpreted or in other words, a meaning is never attributed to a Judgment by interpreting it in oneâ??s own way. From the

reading of the Judgment, we have understood that before framing the guidelines/norms in paragraph- 73, Honâ??ble the Supreme Court has taken into consideration at length the power of the

Supreme Court and other High Courts under Section- 16 of the Advocates Act and the practice of other Courts across the Globe. They have also taken into consideration in paragraph- 70 the

exercise of suo motu power of the Full Court, but such exercise of power has also been subjected to an utmost strict process of scrutiny leaving no scope for any doubt or

dissatisfaction in the matter.

18. â??2019 Rulesâ? is to be examined in the touchstone of the guideline formulated in paragraph- 73 of the said Judgment. While framing the guideline, Honâ??ble the Supreme Court has

specifically held that the norms/ guidelines, in existence, shall be suitably modified so as to be in accord with the present. For brevity, we are not quoting here the entire guideline. But we feel it

beneficial to say that the power of any addition, deletion from the guidelines formulated in paragraph- 73 in the light of the experience to be gained over a period of time is left open for

consideration by Honâ??ble the Supreme Court alone at such point of time that the same becomes necessary. It clearly indicates that any modification in the guideline to suit a particular High

Court is to be in accord with the guidelines framed in paragraph- 73 and except the Supreme Court, no other High Court has any power to add or delete from the guideline.

19. A thorough reading of the entire Judgment along with the guideline framed in paragraph- 73 of the Judgment makes it clear that Honâ??ble the Supreme Court in paragraph- 73.4 of the

Judgment has recognized two sources for drawing advocates for being designated as â??Senior Advocateâ?. One is written proposal by the Honâ??ble Judges and second source is the

application by the advocate concerned. There is no third source of picking an advocate by exercise of suo motu power, though exercise of suo motu power has been discussed in paragraph- 70

of the Judgment. These sources, we think have been inserted in the guidelines after a conscious thought by Honâ??ble the Supreme Court. Honâ??ble the Supreme Court has not thought it

proper to include exercise of suo motu power by either the Supreme Court or other High Courts so far as designation of â??Senior Advocateâ? is concerned.

20. Relevant portion of â??2019 Rulesâ? which is impugned here is reproduced below for ready reference :-

â??6.Â Procedure for Designation:-

(1) All the written proposals or applications for designation of an Advocate as a Senior Advocate shall be submitted to the Secretariat.

Provided further that in case the proposal emanates from a Judge the Secretariat shall request such Advocate to submit Form No.2 duly filled in within such time as directed by the Committee.

(2) On receipt of an application or proposal for designation of an Advocate as a Senior Advocate, the Secretariat shall compile the relevant data and the information with regard to the reputation, conduct, integrity

of the Advocate concerned and on the matters covered by Sl. Nos. 2 & 3 of Appendix-B covering a period of last 5 years.

(3) The Secretariat will notify the proposed names of the Advocates to be designated as Senior Advocates on the official website of the High Court of Orissa, inviting suggestions and views within such time as may

be fixed by the Committee.

(4) After the material in terms of the above is complied and all such information, as may be specifically required by the Committee to be obtained in respect of any particular candidate, has been obtained and the

suggestions and views have been received, the Secretariat shall put up the case before the Committee for scrutiny.

(5) Upon submission of the case by the Secretariat, the Committee shall examine

the same in the light of the material provided and, if it so desires, may also interact with the concerned Advocate(s) and thereafter

make its overall assessment on the basis of the point based format provided in APPENDIX-B to these Rules.

(6) After the overall assessment by the Committee, all the names listed before it will be submitted to the Full Court along with its Assessment Report.

Â (7) Normally voting by ballot shall not be resorted to unless unavoidable. The motion shall be carried out by consensus, failing which voting by ballot may be resorted to. In the event of voting by ballot, the

views of the majority of the Judges present and voting shall constitute the decision of the Full Court. However the Seniormost Judge or Chief Justice as the case may be present in the Full Court shall not cast his

vote. In case the Judges present be equally divided, the Chief Justice or in his absence the Seniormost Judge present shall have the casting vote.

(8) The cases that have not been favorably considered by the Full Court may be reviewed/ reconsidered after the expiry of a period of two years, following the same procedure as prescribed above as if the proposal

is being considered afresh.

(9) Notwithstanding the above noted procedure for designation of an Advocate as Senior Advocate, Full Court on its own can designate an Advocate as Senior Advocate even without any proposal from

Honâ??ble Judges or application from the Advocate if it is of the opinion that by virtue of his/her ability or standing at the Bar said Advocate deserves such designation.â??

20.1. A cursory reading of the aforesaid Rule makes it clear that sub-rules- (1) & (2) correspond to paragraph-73.4 of the Judgment in Indira Jaising case. Sub-rule (3) corresponds to paragraph-

73.5, sub-rule (4) corresponds to paragraph-73.6, sub-rule (5) corresponds to paragraph-73.7, sub-rule (6) corresponds to paragraph-73.8, sub-rule (7) corresponds to paragraph-73.9 and sub-rule

(8) corresponds to paragraph- 73.10 of the said Judgment. Sub-rule (9) according to Mr. Mohanty, learned Senior Counsel appearing for the Orissa High Court and Mr. S.P. Mishra, learned

Senior Counsel appearing for Opposite Party Nos.5 & 7 to 9 corresponds to paragraph-70 of the said Judgment, which speaks of exercise of suo motu power and Section- 16(2) of the

Advocates Act, 1961.

21. It is alleged that, after the stage of sub-rule (2), Opposite Party Nos.5 to 9 were picked by the Permanent Committee and the matter was placed before the Honâ??ble Full Court for

exercise of their suo motu power under sub-rule (9). It is argued that, all the objective data and information with regard to the reputation, conduct and integrity of Opposite Party Nos.5 to 9 were

there on record after the stage of sub-rule (2) and the Honâ??ble Full Court had the occasion to apply their mind to such data and information with regard to the reputation, conduct and integrity

of Opposite Party Nos.5 to 9 at the time of consideration of conferring designation of â??Senior Advocateâ? on them (Opposite Party Nos.5 to 9). Mr. S.P. Mishra, learned Senior Counsel

appearing for Opposite Party Nos.5 & 7 to 9 cites before us the Rule of Punjab & Haryana High Court, which has provision similar to sub-rule (9) of our High Court though couched in different

manner. We are, however, not concerned with the Rule of Punjab & Haryana High Court for the present.

22. In sub-rule (9), the word â??evenâ? after the word â??advocateâ? and before the word â??withoutâ? has been used as an adverb. Literally, it is used as an intensive to emphasize the

identity and character of something and that something here is without any proposal from the Honâ??ble Judges or application from the Advocate. Sub-rule (9), therefore, includes three

sources:-

(1) Proposal from the Honâ??ble Judges;

(2) Application from the Advocate concerned and

(3) Exercise of suo motu power in respect of an Advocate even without any proposal from the Honâ??ble Judges or application from the Advocate concerned, if the Honâ??ble Full Court is of the opinion that, by

virtue of his/her ability or standing at the Bar, the said Advocate deserves such designation.

23. So far as the third source is concerned, we have discussed in detail that, Honâ??ble the Supreme Court in the Judgment in Indira Jaising case has consciously not includedÂ theÂ thirdÂ

sourceÂ inÂ theÂ guidelineÂ framed in paragraph-73. In paragraph- 70, Honâ??ble the Supreme Court has referred to exercise of suo motu power, but has specifically held thus:-

â??xxxxxxx The credentials of every Advocate who seeks to be designated as Senior Advocate or whom the Full Court suo motu decides to confer the honour must be subject to an utmost strict process of

scrutiny leaving no scope for any doubt or dissatisfaction in the matter.â??

Aforesaid quotation so couched is so clear in its meaning that, an advocate who seeks to be designated means an advocate who files an application for being designated, stands apart, from him

on whom the Honâ??ble Full Court suo motu decides to confer the honour. The word â??orâ? in between the words â??Advocateâ? and â??whomâ? has been used as a conjunction, which is

a function word to indicate an alternative. Having discussed this suo motu power in paragraph- 70, Honâ??ble the Supreme Court in paragraph-73.4 has ipse dixit not stated anything about the

pick through suo motu source. Such silence in paragraph-73.4, according to our understanding is a conscious silence.

24. Paragraph- 73 of the said Judgment reads thus:-

73. â??It is in the above backdrop that we proceed to venture into the exercise and lay down the following norms/guidelines which henceforth would govern the exercise of designation of Senior Advocates by

the Supreme Court and all High Courts in the Country. The norms/guidelines, in existence, shall be suitably modified so as to be in accord with the presentâ??.

and Paragraph-74 of the Judgment reads thus:-

74. â??We are not oblivious of the fact that the guidelines enumerated above may not be exhaustive of the matter and may require reconsideration by suitable addition/deletion in the light of the experience to

be gained over a period of time. This is a course of action that we leave open for consideration by this Court at such point of time that the same becomes necessary.â??

After reading the entire Judgment and especially paragraphs-73 and 74, we are of the view that sub-rule(9) of Rule- 6 of â??2019 Rulesâ? is an addition beyond the scope of the

guidelines/normsÂ? framedÂ? inÂ? paragraph-73Â? ofÂ? the Judgment in Indira Jaising case. Therefore, sub-rule(9) of Rule- 6 of â??2019 Rulesâ? is not in consonance with the said Judgment

and ultravires of the guidelines/norms in our considered view.

25. In view of Article- 141 of the Constitution of India, the said guideline is binding on all the Courts of the Country including this Honâ??ble Court and no

citation is necessary to substantiate

this point. It is not out of place to mention here that, in the past, such guidelines were issued in the cases of Vishakha and others, A.R. Antuley, Arnesh Kumar, D.K. Basu, Lalita Kumari and

Prabin Singh Saini to cite a few and some have been crystallized into law subsequently.

26. Assuming arguenda sub-rule (9) of Rule- 6 of 2019 Rules to be valid, it is to be examined whether conferment of designation of 2019 Senior Advocate on Opposite Party Nos.5 to 9 is

above reproach.

Opposite Party Nos. 5 to 9 were applicants for being designated as 2019 Senior Advocates along with other applicants. They were picked for being conferred with the designation after sub-rule

(2) of Rule- 6 stage of 2019 Rules, leaving other applicants to suffer the grind of the processing mill under the said Rules. There is no material before us to reach a conclusion that

applications received from all the applicants were examined in detail or the compilation made by the Secretariat containing relevant data and information with regard to the reputation, conduct and

integrity of the advocates concerned of all the advocates was examined in detail to pick Opposite Party Nos.5 to 9 for conferring them with the designation of 2019 Senior Advocate in exercise

of power under sub-rule (9) of Rule- 6. There is also nothing on record to suggest that the data and materials were placed before the Full Court to apply its mind. Furthermore, Opposite

Party Nos.5 to 9 only and none else were adjudged suitable for exercise of power under sub-rule (9) of Rule- 6, when Opposite Party Nos.5 to 9 were also applicants and being the applicants,

they were in readiness to suffer the grind of the processing mill entirely under Rule-6 of 2019 Rules. Suo motu power is not a power to be exercised ordinarily. It is a power to be

exercised sparingly with circumspection in rare cases. We do not find any such rarity in the present case for exercise of power under sub-rule (9) of Rule- 6 of 2019 Rules. We are,

therefore, constrained to hold that the entire process of conferring designation of 2019 Senior Advocate on Opposite Party Nos.5 to 9 is discriminatory.

27. We have no doubt in our mind that Opposite Party Nos.5 to 9 deserve to be

designated as 'Senior Advocates' and in the process, they shall be designated as 'Senior Advocates'.

We are, however, pained by the argument and submission of Mr. Baug, alleging malafide on the Hon'ble Full Court. He having applied for being designated as 'Senior Advocate', he

should have the character becoming of a 'Senior Advocate'. There should be sobriety in his submission. We fail to understand how Mr. Baug forgot that the Hon'ble Full Court with

consensus took a decision in plurality and in such a case he could not have attributed malafide to each and every Hon'ble Judge of the Court.

28. After our findings (supra), discussion on other points of determination becomes mere academic in nature. Therefore, for brevity, we desist from such discussion.

29. In W.P.(C) No.17110 of 2019, there is an additional prayer to quash the Notification dated 04.09.2019 calling for applications from the eligible advocates for being designated as 'Senior

Advocates'.

From the facts of the case, it is found that first such notification was issued vide Annexure-3 dated 22.04.2019. In response to the aforesaid advertisement vide Annexure-3, fifty (50) applications

were received. The Hon'ble Full Court on 17.08.2019 unanimously resolved to designate Opposite Party Nos.5 to 9 as 'Senior Advocates' in exercise of the power under sub-rule (9) of

Rule- 6 of '2019 Rules'. On 19.08.2019, necessary notification was issued designating Opposite Party Nos.5 to 9 as 'Senior Advocates'. After the aforesaid exercise was over, the

impugned Notification dated 04.09.2019 was issued calling fresh applications from the eligible advocates to be designated as 'Senior Advocates'. In our considered view, after the first

notification vide Annexure- 3, when the process under Rule- 6 was on, it was irregular on the part of the High Court to issue the Notification dated 04.09.2019. Instead of expanding the ambit of

selection process, it put the selection process into more confusion. We are, therefore, of the view that issuance of Notification dated 04.09.2019 is not valid in the eye of law.

30. Before parting with the Judgment, we propose to think aloud on the following aspects:

(I) He is an Advocate with towering personality. He is suave and gentle. His disposition towards the Court and his fellow counsels is impressive. He is known for his ready wit. Ask him any question on any law, he

has an answer with reasonings. His standing in the Bar is remarkable. He is a social factor in the society, he lives. He is humble, dignified, kind and a person with sobriety. He would however not come to stand in a

queue to file an application for being designated as "Senior Advocate". Such a person being an asset to the profession, suo motu power should be reserved to be exercised for such a person only and such

power should be given to the High Courts, as in our understanding, such power has not been given to the High Courts in the guidelines/norms framed in Indira Jaising case.

(II) Designation of "Senior Advocate" is a coveted position from the point of view of the Bar and the society. There should not be crowd in such a coveted position. Every Tom, Dick & Harry should not be

brought to this position by whatever means permissible. Certain percentage of the total strength of a particular Bar should only be allowed to enter into this coveted position.

31. Opposite Party Nos.5 to 9 having been graced by the Hon'ble Full Court with the designation of "Senior Advocate", we do not want to disgrace them at present by withdrawing the

designation, as there is no fault on their part in the entire exercise. Tomorrow, the Hon'ble Full Court may rethink after exhausting the process under Rule-6 of "2019 Rules" to designate

them again as "Senior Advocates", as according to our view, they are deserving, but there may be contrary decision also. Though we have declared sub-rule

(9) of Rule-6 ultravires, we do not propose to strike down the Notification No.1378, dated 19.08.2019 for the present. It would only cease to be after a decision is taken by the Hon'ble Full

Court on the matter regarding designation of "Senior Advocate" is placed before it after exhausting the entire process under Rule-6 in which process applications of Opposite Party

Nos.5 to 9 shall also be taken into consideration.

32. Taking into consideration our discussion (supra), in fine, we hold thus:-

(I) sub-rule (9) of Rule- 6 of the High Court of Orissa (Designation of Senior Advocate) Rules, 2019 is declared as ultravires of the guidelines/norms framed in paragraph- 73 of Indira Jaising case.

(II) The Notification dated 04.09.2019 calling fresh applications from the eligible Advocates for being designated as "Senior Advocate" is quashed and the applications received in response to the said

Notification are not to be taken into consideration.

(III) The Notification No.1378, dated 19.08.2019 shall have effect till fresh decision by the Hon'ble Full Court is taken regarding designation of "Senior Advocate" on consideration of all 48 applications

including that of Opposite Party Nos.5 to 9.

33. The process of designating "Senior Advocates" be completed by end of July, 2021.

34. Both the writ petitions are disposed of accordingly.

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