

(2015) 04 RAJ CK 0111
In the Rajasthan High Court
Case No : Civil Writ Petition No. 2624 of 2014

Sunil Samdaria

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 23-04-2015

Acts Referred:

Advocates Act, 1961 — Section 23, 24A
Civil Procedure Code, 1908 (CPC) — Section 92
Constitution of India, 1950 — Article 162, 165, 226, 309, 367
Criminal Procedure Code, 1973 (CrPC) — Section 190(1)(a), 195(1)(b)(i), 195(1)(b)(ii), 24, 302
Dowry Prohibition Act, 1961 — Section 4
General Clauses Act, 1897 — Section 13
Penal Code, 1860 (IPC) — Section 120B, 177, 193, 196, 198
Prevention of Corruption Act, 1988 — Section 13(1)(d)

Citation : (2015) 04 RAJ CK 0111

Hon'ble Judges : Sunil Ambwani, C.J;Veerender Singh Siradhana, J

Bench : Division Bench

Advocate : R.N. Mathur, Senior Counsel assisted by B.L. Choudhary, Rajendra Prasad, Additional Advocate General and Ashish Sharma, Advocates for the Respondent

Final Decision : Allowed

Judgement

Sunil Ambwani, C.J—The petitioner is an Advocate by profession, enrolled with Bar Council of Rajasthan vide Enrolment No. R/100/1999, and is practicing in the High Court of Rajasthan, Bench at Jaipur. By this writ petition, he has prayed for a declaration that appointment of Dr. Abhinav Sharma, respondent No. 2, as an Additional Advocate General, by the State of Rajasthan, through its Principal Secretary, Department of Law and Legal Affairs, State Secretariat, Jaipur, dated 22.01.2014, be declared as non est and void ab initio. He has also prayed for a writ of quo warranto, quashing and setting aside the order of appointment of respondent No. 2, dated 22.01.2014, as an Additional Advocate General of the State of Rajasthan.

2. The challenge to the appointment of Dr. Abhinav Sharma as an Additional Advocate General of the State of Rajasthan, vide order dated 22.01.2014, and the prayer for issuing a writ of quo warranto, is mainly on four grounds, namely:--

"(i) Lack of eligibility to hold the Office of the Additional Advocate General of the State;

(ii) Lack of institutional integrity attached to the Office of the Additional Advocate General;

(iii) Lack of effective consultation with the Advocate General; and

(iv) Official arbitrariness and on the principles of Wednesbury unreasonableness."

3. On the question of lack of eligibility, it is submitted that Dr. Abhinav Sharma, respondent No. 2, had not put in 10 years of practice as an Advocate as on 22.01.2014, to be eligible, for appointment as an Additional Advocate General of the State. He was enrolled as an Advocate with the Bar Council of Rajasthan on 02.10.2004, vide Enrollment No. R/2399/2004. He had practiced only for 9 years, 3 months and 20 days, as on 22.01.2014, when he was appointed as an Additional Advocate General, and thus, he did not possess the minimum length of practice, which is required to be possessed by an Advocate for his appointment as an Additional Advocate General. He did not satisfy the minimum eligibility, qua the length of practice on the date of his appointment. In *Badreshwar Tanti v. S.N. Choudhary*, AIR 1985 Gauhati Page 32, it was held that by the Gauhati High Court in paragraphs 5 and 8, that the essential requisite for an incumbent, to be appointed as an Additional Advocate General, is that one must be on the rolls of Advocates for more than 10 years, when he is appointed as an Additional Advocate General.

4. It is submitted that in *M.T. Khan and Others Vs. Government of Andhra Pradesh and Others*, (2004) 102 FLR 3 : (2004) 1 JT 146 : (2004) 1 SCALE 336 : (2004) 2 SCC 267 : (2004) 1 SCR 117 : (2004) 2 SLJ 155 : (2004) AIRSCW 504 : (2004) 1 Supreme 149, the Supreme Court had disagreed with the High Court on the applicability of Section 13 of the General Clauses Act, while considering the competence of the Government of Andhra Pradesh in appointing an Additional Advocate General. Relying on the opening words of Article 367 of the Constitution of India, which reads; "unless the context otherwise requires", the Supreme Court held that the appointment of Additional Advocate General is not under the Constitutional scheme, and thus, the Additional Advocate General does not hold the constitutional office. It is submitted that the Supreme Court did not disagree with the requirement of 10 years of practice as an Advocate before one could be appointed as an Additional Advocate General. The judgment of the Gauhati High Court was not varied, modified, or watered down by the Supreme Court.

5. It is submitted that a combined reading of the provisions of the Rajasthan Law

and Legal Affairs Department Manual, 1999 (for short, "the Department Manual, 1999), and the Litigation Policy, 2011 of the State of Rajasthan, as well as the information received by the petitioner, in response to his application dated 05.02.2014, made under the Right to Information Act, 2005, provides that the Law Officers of the Government are, under Rule 4(A) of the Department Manual of 1999, Advocate General; one or more Additional Advocate General; Senior Standing Counsel in the Supreme Court; Advocate on record of Supreme Court; Government Advocates; Public Prosecutors as also the Additional Public Prosecutors and Special Public Prosecutors engaged on retainership; and Standing Counsel for Rajasthan Civil Services Appellate Tribunal. The appointment of an Additional Advocate General is provided by Rule 11 of the Department Manual, 1999, which is silent about minimum length of practice. In reply to the application of the petitioner, dated 05.02.2014, under the Right to Information Act, 2005, an information was furnished to the petitioner on 17.02.2014, enclosing a photocopy of Chapter VI of Litigation Policy, 2011, which demonstrates that the Government had avoided giving direct answer to the query/information sought by the petitioner, qua minimum length of practice, which an Advocate must possess, to be appointed as an Additional Advocate General. The Litigation Policy however gives sufficient guidance about the minimum length of practice. In paragraph 2 of Chapter VI, it is provided that Additional Advocate General is appointed on the advice, and in effective consultation with the Advocate General, to help and share the responsibility of the Advocate General. Paragraph 3 of Chapter VI, provides for "all other Advocates", which, by all reasonable and necessary interpretation, includes all Advocates other than Advocate General and Additional Advocate General, to be selected through a Board, comprising of Chief Secretary or any Officer nominated by him, not below the rank of Additional Chief Secretary; Advocate General; Additional Chief Secretary/Principal Secretary, Finance; Principal Secretary, Department of Personnel; Principal Secretary, Law; and Director Litigation as Member Secretary. The Board is required to screen the aspirants possessing experience of at least 7 years practice in High Court/Supreme Court. Since an Additional Advocate General is required to share and shoulder the responsibilities of the Advocate General, he must have minimum 10 years of practice.

6. It is submitted that so far as Special Public Prosecutor is concerned, he is lower in hierarchy in the category of Government Law Officers under Rule 4(A), but he is also required to have minimum 10 years of practice as an Advocate before he could be appointed as a Special Public Prosecutor, and thus, it will be ironical that a person with less than 10 years of practice, is appointed as an Additional Advocate General. The appointment of Special Public Prosecutor is made under Rule 33 of the Department Manual of 1999 read with Section 24 of the Code of Criminal Procedure, with minimum requirement of practice as an Advocate, to be 10 years. The Officer placed higher in the hierarchy must of necessity possess 10 years of practice before he is appointed as an Additional Advocate General. In the Rules and the Litigation Policy of 2011, no length of

practice is prescribed, nor it can be read as prescription between 7 years and 10 years. When all other Advocates, who are required to be chosen by the Board, are required to have more than 7 years of practice, by necessary corollary, an Additional Advocate General, who is required to aid and assist the Advocate General, must have at least 10 years of practice.

7. It is submitted that the letter of appointment of Additional Advocate General requires him to discharge the duties, as prescribed under Rules 7 to 10 of the Department Manual, 1999, the duties and liabilities of an Additional Advocate General, under Rules 7 to 10, are that of the Advocate General, and thus, he must possess at least 10 years of practice.

8. It is submitted that in the case of Advocate General, an Additional Advocate General also hold the office at the pleasure of the Governor. Whereas an Advocate General gets the fees of Rs. 28,000/- and other emoluments, an Additional Advocate General gets Rs. 22,400/- and other emoluments. All other Law Officers receive lesser emoluments. There are as many as 9 Additional Advocate General in Jaipur Bench of the High Court, and equal number at the Principal Seat of the High Court at Jodhpur. The State Government has taken care that all other Advocates, who are appointed as Additional Advocate General, must possess sufficient length of practice. The length of practice of the remaining 8 Additional Advocate General at Jaipur, other than Dr. Abhinav Sharma, is between 22 to 37 years, whereas Dr. Abhinav Sharma was appointed as an Additional Advocate General with practice of only 9 years, 3 months and 20 days, as on 22.01.2014.

9. On the question of lack of institutional integrity, it is submitted that a principle was evolved by the Supreme Court in Centre for PIL and Another Vs. Union of India (UOI) and Another, AIR 2011 SC 1267 : (2011) 266 ELT 6 : (2011) 2 RCR(Criminal) 491 : (2011) 3 SCALE 148 : (2011) 4 SCC 1 : (2011) 1 SCC(L&S) 609 : (2011) 2 UJ 908 : (2011) AIRSCW 157 : (2011) AIRSCW 1690 : (2011) 2 Supreme 349 , following the judgment in N. Kannadasan Vs. Ajoy Khose and Others, (2009) 7 JT 601 : (2009) 8 SCALE 351 : (2009) 7 SCC 104 : (2009) 7 SCR 668 . The principle was reiterated in State of Punjab Vs. Salil Sabhlok and Others, (2013) 3 AD 301 : (2013) 3 JT 214 : (2013) LabIC 1769 : (2013) 2 SCALE 573 : (2013) 5 SCC 1 : (2013) 2 SCC(L&S) 1 : (2013) 2 SCT 555 : (2013) AIRSCW 1697 : (2013) 2 Supreme 135 , and thereafter in Commissioner of Police, New Delhi and Another Vs. Mehar Singh, (2013) 7 AD 352 : AIR 2013 SC 2861 : (2013) 9 JT 470 : (2013) LabIC 3207 : (2013) 4 LLN 461 : (2013) 9 SCALE 444 : (2013) 7 SCC 685 : (2013) 2 SCC(L&S) 910 : (2013) 4 SCT 311 . In all these cases, it was held that for holding the Constitutional Office, or a Public Office, institutional integrity is an inbuilt requirement, and it needs no statutory prescription. It was held in Commissioner of Police, New Delhi And Another v. Mehar Singh(supra), that even a person who is acquitted from criminal case, cannot be appointed on a public post, as a matter of right.

10. It is submitted that on a complaint(Complaint No. 88/2011), filed by Smt.

Richa Sharma, the ex-wife of Dr. Abhinav Sharma, complainant, before the Additional Chief Judicial Magistrate No. 8, Jaipur on 19.08.2011, a First Information Report No. 188/2011 was registered at Police Station Jyoti Nagar, Jaipur on 03.09.2011, alleging therein that Dr. Abhinav Sharma had fraudulently obtained an ex parte decree of divorce against her, in which Final Report No. 102/2011, dated 22.10.2011, was submitted by the police. The Final Report was not accepted by the Court, on a Protest Petition filed by her. The Court of Additional Chief Metropolitan Magistrate No. 12, Jaipur Metropolitan, Jaipur took cognizance of the matter vide order dated 06.08.2012 under Sections 193, 196, 198, 420, 429 read with 120B IPC for having obtained a fraudulent ex parte divorce decree. Before taking cognizance, the Court had passed an order on 03.12.2011 for posting the matter on 09.12.2011 for appropriate orders on the protest petition. To delay and stall the judicial proceedings, Dr. Abhinav Sharma challenged the order dated 03.12.2011 fixing the matter on 09.12.2011, in the Revisional Court, by filing Revision No. 6/2012, which was rejected by an order dated 04.05.2012. The order, by which cognizance was taken, was also challenged by the respondent No. 2 by filing Criminal Revision No. 19/2013 before the Additional Sessions Judge No. 3, Jaipur Metropolitan, Jaipur, which was dismissed on 26.10.2013. Dr. Abhinav Sharma had challenged the legality of the order taking cognizance and its confirmation by the Revisional Court in S.B. Criminal Writ Petition No. 26/2014, which is pending in the High Court, Bench at Jaipur, and in which, an interim order was passed on 26.03.2014, directing the summoning Court to adjourn the matter beyond the date fixed in this Court. There is no interim order in the matter. The order dated 26.03.2014, is quoted as below:--

"S.B. Criminal Writ Petition No. 26/2014

Date of Order :: 26.03.2014

Hon"ble Mr. Justice Kanwaljit Singh Ahluwalia

Mr. VR Bajwa, for petitioner.

Mr. Aladeen Khan, PP for the State.

Shri VR Bajwa, appearing for the petitioner has submitted that the report dated 14th May, 2009 given by Rooplal, Process Server is neither a forged nor a fabricated document. Counsel for the petitioner has submitted that utmost the same was a wrong declaration made by the Process Server to the Court on the basis of false information given by the petitioner. Counsel states that furnishing false information (address of respondent by the petitioner) fall under Section 177 of the Indian Penal Code.

Counsel for the petitioner has further submitted that false declaration made by Process Server Rooplal cannot be termed as a fabricated and false document and, therefore, same will fall under Section 195(1)(b)(i) and not under Section 195(1)(b)(ii) Cr.P.C.

Issue notice to the respondent for 16th April, 2014.

Meanwhile, the summoning court is directed to adjourn the matter beyond the date fixed in this Court."

11. It is submitted that one other First Information Report No. 104/2011 was registered at Mahila Thana, Jaipur City(South), on 06.08.2011, at the instance of Smt. Richa Sharma, alleging offences under Sections 498-A and 406 IPC, and for offence under Section 4 of the Dowry Prohibition Act. On registration of the FIR, permission was sought to arrest Dr. Abhinav Sharma vide letter dated 09.08.2011, but later on, a Final Report was submitted on 30.09.2011. The complainant filed an application for re-investigation in the matter, on which re-investigation was ordered on 09.04.2013, which was challenged by Dr. Abhinav Sharma in the Revisional Court by filing Revision Petition No. 69/2013. The Revisional Court allowed the revision vide order dated 03.07.2013, and while quashing and setting aside the order dated 09.04.2013, directed to find out whether further investigation in the matter can be directed or not, after considering the principles of law settled by the Supreme Court, and to pass an appropriate order, in accordance with law. This order was challenged by Richa Sharma before the High Court in S.B. Criminal Misc. Petition No. 2500/2013, which was decided on 23.07.2013, upholding the order of the Revisional Court, with direction to the trial Court to pass an appropriate order, as to whether further investigation is called for or not, within two weeks. The trial Court ordered further investigation on 04.09.2013, which was challenged by Dr. Abhinav Sharma by filing Criminal Revision No. 36/2013. The revision was allowed, in part, on 18.10.2013 by the Additional Sessions Judge No. 3, Jaipur Metropolitan, Jaipur, observing that an effective opportunity of hearing was to be given to Dr. Abhinav Sharma before passing the order of further investigation. After passing of the order dated 18.10.2013, Dr. Abhinav Sharma imputed allegations on the trial Judge, and filed a Transfer Application, in which an order was passed on 31.10.2013, requesting the District and Sessions Judge to transfer the matter to another Court. The Criminal Misc. Petition is also pending before this Court, challenging the criminal proceedings arising out of FIR No. 104/2011.

12. It is stated that a Criminal Complaint No. 180/2012, was filed by the erstwhile wife of Dr. Abhinav Sharma, alleging an offence of rape under Section 376 IPC against him. In the complaint case, the statement of the complainant was recorded on 24.09.2012, and an enquiry was ordered. This order, dated 24.09.2012, was challenged by Dr. Abhinav Sharma by filing Revision No. 182/2012 before the Revisional Court, which had confirmed the order dated 24.09.2012, with some modifications, directing that instead of enquiry being conducted by the police, it should be held by a Magistrate.

13. It is submitted by the petitioner that, apart from the aforesaid criminal cases, which includes the cases of fraud as well as allegations of threat to life and rape, various other cases are pending against Dr. Abhinav Sharma, and that

disciplinary proceedings are also pending against him before the Bar Council of Rajasthan, in which there is a stay order passed by the Principal Seat of this Court at Jodhpur, and the matter is still pending. The pendency of these criminal cases of serious offences and disciplinary proceedings pending against Dr. Abhinav Sharma, were not brought to the knowledge of the State Government, when he was appointed as an Additional Advocate General of the State. His position as an Additional Advocate General will not only affect the proceedings in the Court in which he is a party, he can influence the Judges with his position as an Additional Advocate General, to decide the cases in his favour. The pendency of these cases, attach disabilities to the Office of the Advocate General under Rule 9 of the Department Manual, 1999, and impose restraint upon the persons holding the Office of the Advocate General and the Additional Advocate General. Rule 9(5) prohibits even tendering of legal advice to a private person on the matters, in which interests of those persons are adverse to the Government. The Litigation Policy, with reference to Rule 9(5), virtually prohibits any person to hold the Office of the Law Officer, if a criminal case is pending against him. A person facing criminal cases, should not be appointed as a Law Officer by the Government of Rajasthan, as he can manage and influence the prosecution against him, thereby incurring upon him disability, morally, ethically, or otherwise. It is submitted that the Public Prosecutors in the cases pending against the respondent No. 2, are the Officers junior to respondent No. 2, and are likely to be affected by the Office held by him.

14. On the question of lack of effective consultation with the Advocate General, it is submitted that the facts and the documents of the pendency of criminal cases, were not placed before the Advocate General before the appointment. In the absence of placement of the relevant material before him, consultation was perfunctory one, and could not be termed as an effective consultation, and would stand vitiated on the principles of wednesbury unreasonableness. The petitioner has relied on Centre for PIL and Anr. v. Union of India and Anr.(supra), para 32 and 33, State of Punjab v. Salil Sabhlok And Others(supra), para 29, N. Kannadasan v. Ajoy Khose And Others(supra), para 80 onwards and In Re: Appointment and Transfer of Judges, AIR 1999 SC 1 : (1998) 5 SCALE 629 : (1998) 5 SCALE 36 : (1998) 7 SCC 739 : (1998) 2 SCR 400 Supp : (1998) AIRSCW 3400 : (1998) 8 Supreme 140 , in support of his submission.

15. It is submitted that the State Government has nowhere in its reply, stated that it had the knowledge or that the material was available on record in support of the fact the Advocate General was effectively consulted before making the appointment of respondent No. 2. The pendency of the criminal cases against Dr. Abhinav Sharma was not placed before the Advocate General, or the State Government, and thus, the order appointing him as an Additional Advocate General is void ab initio, and is legally ineffective. For this submission, the petitioner has relied upon Rajesh Awasthi Vs. Nand Lal Jaiswal and Others, AIR 2013 SC 78 : (2013) ELR 137 : (2012) 135 FLR 926 : (2013) 1 RCR(Civil) 275 : (2012) 10 SCALE 527 : (2013) 1 SCC 501 , Smt. Juthika Bhattacharya Vs. The

State of Madhya Pradesh and Others, AIR 1976 SC 2534 : (1976) 4 SCC 96 : (1977) 1 SCR 477 : (1976) 1 SLJ 596 : (1976) 8 UJ 786 , and Dineshwar Prasad Vs. The State of Bihar and Another, AIR 1980 Patna 54 .

16. On the question of official arbitrariness and the principles of wednesbury unreasonableness, the petitioner submits that the appointment of Dr. Abhinav Sharma as an Additional Advocate General, even when he did not have 10 years of practice, and there were three criminal cases as well as disciplinary proceedings are pending against him in the Bar Council of Rajasthan, and also lack of effective consultation in which no material was placed before the Advocate General, makes his appointment void ab initio, and legally ineffective.

17. Shri Rajendra Prasad, learned Additional Advocate General, defending the State of Rajasthan, has filed an interim reply to the writ petition, in which it is stated that Additional Advocate General is not a post under any State service, nor a Constitutional post, but is only a designation given by the State Government to a Lawyer, and thus, the writ of quo warranto is not maintainable. The allegations of favouritism are not substantiated by any material, nor it is pointed out, as to who has acted in such a manner, and what was the evidence or basis for making such allegations. The suitability of a candidate/lawyer for appointment as an Additional Advocate General is required to be taken into consideration by the Government, and not by the Court. Their engagement is to avail the professional services of a lawyer. Such engagement is to be seen by the State Government and its functionaries. The writ petition lacks specific pleadings in this regard. The Office of the Additional Advocate General is not equivalent to the Advocate General. So far as plea of consultation is concerned, it is imaginary and based on presumption. The controversy involved in Om Prakash Joshi, Advocate and ors Vs. State of Rajasthan and ors, AIR 2002 Raj 33 : (2001) 3 WLC 199 : (2001) 3 WLN 632 , was completely different, in which prayer was made for public at large, and not against any individual, that an advertisement for appointment of Advocate General/Additional Advocate General, or panel Lawyers should be made, and then the matter should be considered for appointment. The aforesaid case has no relevance to the present case.

18. It is submitted by Shri Rajendra Prasad, learned Additional Advocate General, after adopting the arguments of learned counsel appearing for Dr. Abhinav Sharma, that there is no provision in the Constitution of India, or in the Department Manual, prescribing length of practice for appointment as an Additional Advocate General. There is no comparison of the Office of the Additional Advocate General with the Advocate General and Special Public Prosecutor.

19. On the question of lack of institutional integrity, it is submitted that the judgments cited at the Bar, relate to the Office of Central Vigilance Commissioner. In the present case, the State of Rajasthan has only chosen the respondent No. 2 as its Counsel. In the case of Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, AIR 1991 SC 537 : (1990) 4 JT 211 : (1991)

1 SCC 212 : (1990) 1 SCR 625 Supp : (1991) 1 UJ 645 , it was stated that the Office may be designated in any other manner. The Lawyers are retained by the State Government on its choice, considering the availability of the Lawyers, to represent the State in the Courts. In the realm of choosing a Counsel, the State Government rely on the reputation of the Counsel, which is to be considered in the same manner, which the client may adopt in choosing his Counsel. The work is assigned to a Lawyer by the Department through the Law Department, considering his ability, special knowledge on the subject. The integrity and loyalty of the Counsel towards his client, cannot be made subject to judicial review about his suitability. The State Government does not invite applications for selecting the Additional Advocate General. The suitability of a Lawyer is a fluid concept of uncertain import. In Charan Lal Sahu and Others Vs. Giani Zail Singh and Another, AIR 1984 SC 309 : (1983) 2 SCALE 961 : (1984) 1 SCC 390 : (1984) 2 SCR 6 : (1984) 16 UJ 873 , it was held that suitability of a candidate is to be judged by the Electorates, and not by the Court.

20. On the question of pendency of criminal cases, it is submitted that the pendency of the criminal case is not the material, which is required to judge the suitability of a Counsel. The Bar Council will take care of any complaint made regarding conduct of a Counsel, and that the State Government while appointing a Counsel, is not required to consider the pendency of such cases, as a Bar to the appointment.

21. On the question of consultation, Shri Rajendra Prasad, Additional Advocate General, has relied on the judgment in N. Kannandashan v. Ajoy Khose (supra), relating to the President of State Consumer Commission, in which the words "consultation" and "concurrence", were considered by the Hon"ble Supreme Court. He submitted that there is wide difference between the words "consultation" and "concurrence", and in the present case, there was nothing to show that the Advocate General was not consulted in the appointment of respondent No. 2 as an Additional Advocate General. It is submitted that there was no official arbitrariness, nor the violation of the principles of Wednesbury unreasonableness in appointing the respondent No. 2 as an Additional Advocate General.

22. On the conclusion of the hearing, learned Additional Advocate General was required to file an affidavit, as to whether, in view of the material brought on record in these proceedings, the State Government would like to take a different view on the appointment of Dr. Abhinav Sharma.

23. In response, an affidavit of Shri Arvind Kumar Sharma, posted as Administrator Litigation, Office of Government Advocate, Rajasthan High Court, Bench at Jaipur, has been filed, stating therein in paragraph 4 that; " That Smt. Richa, ex-divorced wife of respondent No. 2 had filed a complaint and thereafter position was explained by respondent No. 2 in writing to the Chief Minister which was considered and having found that the cases are essentially outcome of matrimonial disputes and no conviction has been recorded by any court of law

and therefore, has no bearing upon continuance of retainership, no further action was thus found to be necessary. In paragraph 5, it was stated; "That matter was however, also sent to the learned AG who also having considered the issue opined that no further action is required."

24. Shri R.N. Mathur, learned Senior Counsel, appearing for the respondent No. 2, Dr. Abhinav Sharma, submitted that the submissions raised by the petitioner are in two parts; first relates to eligibility i.e. 10 years standing whether required or not; and second is suitability on the pendency of certain cases arising out of some strained matrimonial disputes by ex-wife.

25. On the question of eligibility, Mr. Mathur submitted that in *M.T. Khan v. Govt. of Andhra Pradesh*(supra), it was held by the Supreme Court that the proposition that singular includes plural, cannot apply to Article 165 of the Constitution of India, and that the source of State's power to engage an Additional Advocate General lies in Article 162, and not under Article 165 of the Constitution. In paragraph 10 of the judgment, it was held; "The constitutional scheme, thus, is that when a constitutional post is required to be filled up by a person having the qualification specified therefor, he would alone perform the duties and functions, be it constitutional or statutory, attached to the said office. The Constitution does not envisage that such functions be performed by more than one person."

26. It is submitted that the appointment of an Additional Advocate General is not an appointment, to be made in a service jurisprudence, governed by any service conditions, or law, nor it is a cadre based post available under State services. The order impugned is merely an order of retainership, and there exists only a Client-Advocate relationship, which cannot, in any way, be termed as an appointment. There is a clear distinction between the Advocate General and the Additional Advocate General. Whereas the Advocate General is a Constitutional Authority, Additional Advocate General is merely an Advocate retained by the State Government. Whereas the Advocate General can be only one, appointed under Article 165 of the Constitution of India, Additional Advocate General is appointed under the executive powers of State under Article 162 of the Constitution of India, and there can be more than one Additional Advocate General, to defend the State Government. An Additional Advocate General, under the law, has no constitutional duty to address the house of Legislature, nor he can perform the statutory functions under Section 302 Cr.P.C. and Section 23 of the Advocates Act. He has no statutory powers under the Contempt of Courts Act, as given to the Advocate General, nor does he perform Constitutional functions, as envisaged in Article 165 of the Constitution, or in the Department Manual, 1999, which are merely executive instructions, and are not the statutes, violation of which may attract an enquiry, to issue a writ of quo warranto. An Additional Advocate General does not hold the post, in terms of Article 309 of the Constitution of India, as there is no recruitment under any Recruitment Rules.

27. Relying on *State of U.P. and Another Vs. Johri Mal*, AIR 2004 SC 3800 : (2004) 1 JT 443 Supp : (2004) 5 SCALE 1 : (2004) 4 SCC 714 : (2004) 2 SCR

560 Supp : (2004) 3 SLJ 175 : (2004) AIRSCW 3888 : (2004) 4 Supreme 149 , it is submitted that similarity between the two appointments, is that both are the result of spoils system (patronage system- where the elected Government rewards, like in US, its workers with Government job and appointment). It is submitted by Shri R.N. Mathur, that in various States, the Advocates are designated on the choice, nomenclature of which in Jammu and Kashmir and Himachal Pradesh is Senior Additional Advocate General, Additional Advocate General, Deputy Advocate General and Assistant Advocate General; in Madhya Pradesh and Chhattisgarh, the Officers are designated as Additional Advocate General and Deputy Advocate General; in State of Bihar and Rajasthan, they are known as Additional Advocate General, whereas in State of Kerala, they are designated as Additional Advocate General and State Attorney.

28. Relying on State of U.P. v. Johri Mal(supra), it is submitted that the executive instructions (Legal Remembrancer Manual UP), can be amended, altered, or withdrawn, at the whims and caprice of the executives for the party in power. They do not carry same status as of statutes.

29. On the question of suitability, it is submitted that it is the choice of the State Government to select and appoint a Lawyer, where only the eligibility is to be seen, not the suitability, as held by the Supreme Court in Registrar General, High Court of Madras Vs. R. Gandhi and Others, (2014) 4 JT 261 : (2014) 3 SCALE 412 . The suitability is subjective and very fluidic in approach and depends upon the wishes of the authorities making choice. It is not the case of the petitioner that the appointment of the respondent No. 2 is on political lines, or on the merits. The cases filed against Dr. Abhinav Sharma, arise out of an unfortunate matrimonial discord, and thus, it cannot be said that non-consideration of these cases, will make his engagement bad.

30. It is submitted that absence of consultation, or any irregularity in consultation, does not give a person, a cause of action in a Court of Law, to seek relief under Article 226 of the Constitution of India, as held by the Supreme Court in Ram Rakh Vyas v. Union of India, AIR 1977 Rajasthan 243. Dr. Abhinav Sharma had submitted a clarification to the Chief Minister regarding the alleged cases, arising out of matrimonial disputes on 25.01.2014, after his appointment on 22.01.2014. This fact was also submitted to the Court while a pointed query was made. Dr. Abhinav Sharma is a meritorious Degree holder of the University of Rajasthan with an expertise Degree of Doctorate in the field of Constitutional Law. His qualification was considered before his appointment as an Additional Advocate General. He is entitled to practice before any Court, and has not incurred any disqualification, as contemplated under Section 24A of the Advocates Act, and Rules 43 and 49 of the Bar Council of India Rules. Since, he is eligible to practice as an Advocate, no restrictions can be imposed on the choice of the State Government, to approach and engage him as its Lawyer.

31. It is submitted by Shri R.N. Mathur, that the petitioner is a proxy litigant. He has appeared as proxy to ex-wife of Dr. Abhinav Sharma, which is proved by the

folios of copying application, on which the documents annexed with the writ petition, were generated. The petitioner has, in the course of arguments, refused to submit the source of his knowledge to the documents, which clearly suggests that he is acting at the behest of Smt. Richa Sharma. His affidavit has not been sworn properly with regard to his knowledge of the documents. Shri R.N. Mathur also submitted that nobody should be allowed to indulge in wild reckless allegations besmirching the character of others. The public mischief with an oblique motive, must be avoided by the Courts, for the litigants to seek relief. The petitioner has not come to the Court with clean hands, claiming the reliefs in the nature of writ of quo warranto.

32. It is submitted by Mr. Mathur, relying on *Ram Rakh Vyas v. Union of India*(supra), that absence of consultation, or any irregularity in consultation, should not afford a person, a cause of action in a Court of Law.

33. We have considered the submissions at the Bar.

34. On the first ground of challenge, namely lack of eligibility to hold the Office of the Additional Advocate General of the State, we are of the view that the matter is covered by the judgment of the Hon'ble Supreme Court in *M.T. Khan v. Govt. of Andhra Pradesh*(supra). In this opinion, rendered by the Hon'ble Supreme Court on a question, as to whether the State has authority to appoint an Additional Advocate General in terms of Article 165 of the Constitution of India, it was held that the power of the Governor of the State under Article 165 is to appoint a person who is qualified to be appointed as a Judge of a High Court, as Advocate General. Similar expressions have been used by the Constitution-makers for the purpose of appointment of holders of constitutional posts including the Attorney General of India, Comptroller and Auditor General of India, the Chief Justice and Judges of the High Courts and Supreme Court, providing for the qualification specified therefor, and thus, he would alone perform the duties and functions, be it constitutional or statutory, attached to the Office. If more than one person is appointed to discharge the constitutional functions as also the statutory functions, different Advocate Generals may act differently resulting in a chaos. The Office of the Advocate General is a public office. He not only has a right to address the Houses of Legislature but is also required to perform other statutory functions in terms of Section 302 of the Code of Criminal Procedure, Section 92 of the Code of Civil Procedure, and Section 23 of the Advocates Act. Each of such functions by the Advocate General is of great public importance. Such public functions are required to be performed by the holder of a constitutional post having regard to his stature and the responsibilities endowed on him. The Government of a State as a litigant can appoint as many as it likes the lawyers to defend it, and for this purpose, the State is not prohibited from conferring such designation on such legal practitioners as it may deem fit and proper. The State cannot appoint more than one Advocate General. The Rule as contained in Section 13 of the General Clauses Act and Article 367 of the Constitution of India, provides that singular

would include a plural is not applicable in view of the crucial words occurring in Article 367 of the Constitution: "unless the context otherwise requires". The context in the present case is appointment of a person as an Advocate General of the State, which excludes the possibility of another Advocate General, or for that matter, any other person by whatever designation, to be equivalent or attaining the same Office as Advocate General. The words in Article 165 of the Constitution, to appoint a person as Advocate General, who is qualified to be appointed as a Judge of a High Court, are not vague, indefinite and ambiguous, to apply to give it any other interpretation. By applying the golden rule of literal interpretation, no difficulty arises in giving effect to the constitutional scheme, and thus, the question of application of the principles of interpretation of a statute does not arise. The Supreme Court further held in paragraphs 16 and 19, that the State in exercise of its jurisdiction under Article 162 of the Constitution, is competent to appoint a lawyer of its choice and designate him in such manner, as it may deem fit and proper. Such persons who are although designated as Additional Advocate Generals, are not authorised to perform any constitutional or statutory functions, exclusively assigned to the Office of the Advocate General.

35. In our view, the judgment in *M.T. Khan v. Govt. of Andhra Pradesh*(supra), squarely covers and negates the arguments raised by the petitioner, that the respondent No. 2, before his appointment as an Additional Advocate General, must have possessed the minimum eligibility, qua the length of practice as an Advocate, on the date of his appointment. The question is, thus, decided against the petitioner.

36. On the question of lack of institutional integrity attached to the Office of the Additional Advocate General, the petitioner has placed reliance on a judgment of the Supreme Court in *Centre for PIL and Anr. v. Union of India and Anr.*(supra), in which in paragraph 33, it was held that when institutional integrity is in question, the touchstone should be "public interest", which has got to be taken into consideration. Following the case of *N. Kannadasan v. Ajoy Khose And Others*(supra), the Supreme Court held, while considering the institutional integrity, that we should not be understood to mean that the personal integrity is not relevant. It certainly has a co-relation with institutional integrity. Dealing with the Office of the Central Vigilance Commissioner, which was in question, it was held that it is the independence and impartiality of the institution, like Central Vigilance Commissioner, which has to be maintained and preserved in larger interest of the rule of law. While making recommendations, the High Powered Committee performs a statutory duty and the criteria of the candidate being a public servant, or a civil servant in the past is not the sole consideration. The High Powered Committee has to look at the record and take into consideration, whether the candidate would or would not be able to function as a Central Vigilance Commissioner. Whether the institutional competency would be adversely affected by pending proceedings and if by that touchstone the candidate stands disqualified, then it shall be the duty of the High Powered Committee, not to recommend such a candidate. In this case, *Shri P.J. Thomas*

was facing allegations of offence under Section 120B IPC read with Section 13(1) (d) of the Prevention of Corruption Act. In *K. Karunakaran v. State of Kerala and Another* (Criminal Appeal No. 86 of 1998), the Supreme Court had observed that the registration of the FIR against Shri Karunakaran and others, cannot be held to be the result of malafides or actuated by extraneous considerations. The menace of corruption cannot be permitted to be hidden under the carpet of legal technicalities and in such cases, probes conducted, are required to be determined on facts and in accordance with law. The judgment of the Kerala High Court in Criminal Revision Petition No. 430/2011, was not considered by the High Powered Committee, so also the judgment of the Supreme Court in *K. Karunakaran v. State of Kerala and Another* (supra), which was binding on the High Powered Committee, and in any event, required due weightage was to be given while making recommendations, particularly when the said judgment had emphasized the importance of probity in high offices. The Supreme Court held: "This is what we have repeatedly emphasized in our judgment- institution is more important than individual(s)." The Supreme Court further held that the recommendations made by the High Powered Committee was non est in law. Further, the Supreme Court did not agree with the submission that a writ of quo warranto cannot be invoked unless there was a clear infringement of the law.

37. Relying on *Ashok Lanka and Another Vs. Rishi Dixit and Others*, AIR 2005 SC 2821 : (2005) 5 JT 395 : (2005) 5 SCC 598 : (2005) 1 SCR 299 Supp ; *Ashok Kumar Yadav and Others Vs. State of Haryana and Others*, AIR 1987 SC 454 : (1986) LabIC 1417 : (1985) 1 SCALE 1290 : (1985) 4 SCC 417 : (1985) 1 SCR 657 Supp ; *R.K. Jain Vs. Union of India and Others*, AIR 1993 SC 1769 : (1993) 65 ELT 305 : (1993) 3 JT 297 : (1993) 2 SCALE 843 : (1993) 4 SCC 119 : (1993) 3 SCR 802 ; and *Hari Bansh Lal Vs. Sahodar Prasad Mahto and Others*, AIR 2010 SC 3515 : (2010) 9 JT 192 : (2010) 9 SCC 655 : (2010) 10 SCR 561 : (2010) AIRSCW 5567 , it was held by the Supreme Court, that judicial review is concerned with whether the incumbent possessed qualifications for the appointment and the manner in which the appointment came to be made, or whether procedure adopted was fair, just and reasonable. The Government is not accountable to the Courts for the choice made, but the Government is accountable to the Courts in respect of the lawfulness/legality of its decisions when impugned under the judicial review jurisdiction. The Supreme Court further held that in the matters of appointment of Central Vigilance Commissioner, the President's discretion cannot be invoked as a defense as he has to act on the advice of the Council of Ministers under Article 74 of the Constitution of India.

38. It cannot be denied that the Office of the Advocate General as well as the Office of the Additional Advocate General, even if it is not the Office of the Advocate General, considering the importance attached to it, in the matters of prosecuting or defending the State Government, is a public office. An Additional Advocate General receives salary from the State Government and works under its control. He can be appointed and removed by the State Government, and thus, he holds a public office. In *G.D. Karkare vs. T.L. Shevde and Others* AIR

1952 330 (Nagpur) , the Division Bench, in an erudite judgment, considering with reference to the Office of the Advocate General, as to whether the Office is a public office, for which a writ of quo warranto can be issued when there has been usurpation of an Office, held that the Office of the Advocate General is an Office of a public nature and an Office substantive in character and independent of title.

39. The duties of the Office of the Additional Advocate General as a Law Officer of the Government, are to share, assist and shoulder the responsibility of the Advocate General. The letter of appointment of the respondent No. 2, dated 22.01.2014, prescribes that as an Additional Advocate General, he will be required to discharge the duties prescribed under Rule 7 to 10 of the Department Manual, 1999. Under Rule 7 to 10 of the Department Manual, 1999, the duties and liabilities of an Additional Advocate General are that of the Advocate General. The letter of appointment, thus, enjoins an Additional Advocate General, to perform the duties of the Advocate General, for which holder of the Office must have impeccable integrity. He should not have suffered any proceedings of law of the nature of moral turpitude, and certainly not the criminal cases, in which he is an accused of offence of cheating, and having committed rape on a person of a woman, who has alleged deceit and fraud, at the hands of her husband, of not only obtaining an ex parte decree of divorce without her knowledge, but also to have cohabitate with her by fraud falsely inducing her to be a legally wedded wife, whereas he had the full knowledge that he had obtained an ex parte decree of divorce against her, of which she had no knowledge. The Court has taken cognizance of the offence, against which the revision petition was dismissed, and that the High Court has not granted any interim order. He is facing trial of the offences under Sections 193, 196, 198, 420, 429 read with Section 120B IPC in pursuance to FIR No. 188/2011, and the offence under Sections 498-A and 406 IPC in FIR No. 104/2011, in which reinvestigation was ordered, against which the revision was allowed. A criminal case is also pending for an offence under Section 376 IPC in Criminal Complaint No. 180/2012, in which the statement of the complainant was recorded, and an enquiry was ordered, and against which a revision was filed by the respondent No. 2, in which it was directed that instead of enquiry being conducted by the police, it should be held by a Magistrate. The respondent No. 2, thus, cannot be said to have possessed the personal integrity of the nature, that he may be appointed as an Additional Advocate General, which has the same duties and functions, to be discharged, as that of the Advocate General, with considerable influence on the judiciary including the Prosecutors and trial Courts.

40. In our view, on the aforesaid facts and circumstances, the appointment of Dr. Abhinav Sharma as an Additional Advocate General, on the face of the allegations against him, which have not been denied and the pendency of the criminal cases, even if they have been instituted at the instance of her wife, which are all the more important, has seriously compromised the institutional integrity attached to the Office of the Additional Advocate General. The State Government, in its reply, has not been able to satisfy the Court that holding of

the Office of the Additional Advocate General by the respondent No. 2, on the face of the aforesaid allegations and pendency of four criminal cases, will not affect the institutional integrity, attached to the Office of the Additional Advocate General.

41. On the question of effective consultation with the Advocate General, in the reply filed by the State of Rajasthan through its Principal Secretary, Department of Law and Legal Affairs, State Secretariat, Jaipur, sworn by Shri Arvind Kumar Sharma, Administrator Litigation, Office of the Government Advocate, Rajasthan High Court, at Jaipur, after raising preliminary objections to the maintainability of the writ petition for a writ of quo warranto, and after submitting that the Office of the Additional Advocate General is not equal to the Office of the Advocate General, and that the respondent No. 2 is not suffering with any disqualification on the basis of which, such assignment could not have been made, nor any 7 provisions of law have been violated, it is stated that the appointment order of the Advocate General and the Additional Advocate General is made by His Excellency the Governor, whereas appointment order for Government Advocate and Government Counsels" is made at the Government level in the State. No specific pleadings have been made, as to who has acted with favouritism, and in what manner. It has not been disclosed in the writ petition, as to how the respondent No. 2 has suffered disqualification for appointment as an Additional Advocate General. With regard to consultation, in reply to para 5(xix) of the writ petition, it is stated in para 2(xix), that before making appointment of the respondent No. 2, learned Advocate General was consulted and he gave consent for his appointment. It is then stated that how much enquiry he made before giving consent, is within the knowledge of the learned Advocate General. Even otherwise also, if there was only the matters relating to some matrimonial disputes of the respondent No. 2, so also when there was no guilt recorded or criminal charge proved, there was no illegality. The reply given by the State of Rajasthan in para 2(xix), is quoted as below:--

"(xix) That the contentions made in para 5(xix) of the writ petition are not sustainable and as such denied. Before making appointment of Respondent No. 2, the learned Advocate General was consulted and he gave consent for appointment. It is noteworthy that how much enquiry he made before giving consent is within the knowledge of learned Advocate General. Moreso, even otherwise also if there was only matters which were related with some matrimonial disputes of respondent No. 2 so also when there was no guilt recorded or criminal charge was proved, there was no illegality. Hence it is incorrect to say that in making appointment of respondent No. 2 there was no illegality or arbitrariness."

42. The reply given, as aforesaid, does not satisfy us that the Advocate General had the knowledge of the pendency of the criminal cases and disciplinary proceedings for misconduct against the respondent No. 2. In a cleverly drafted reply, knowledge of the Advocate General attributed only to him, has not been

admitted. The reply thereafter evades the question as to whether there was effective consultation, which also means that there was complete material before the Advocate General, to form an opinion about the integrity of the respondent No. 2, to hold the Office of the Additional Advocate General. The State Government has brushed aside the relevance of the pendency of the criminal cases on the ground that these were the matters, which were relating to some matrimonial disputes, in which no guilt was recorded, nor any charge was proved, and thus, there was no illegality in making appointment of respondent No. 2 as an Additional Advocate General.

43. In order to satisfy us, as to whether the Advocate General, with whom consultation in appointment is mandatory, on the recommendations made by the Committee, and whether the Committee had the information of the criminal cases available to it, we required the State Government to file an affidavit. To supplement the query raised by us during the course of hearing on 04.02.2015, an affidavit of Shri Arvind Kumar Sharma, Administrator Litigation, Office of Government Advocate, Rajasthan High Court, Bench at Jaipur, has been filed in five paragraphs, which is quoted as below:--

"1. That I am officer incharge of the present case and as such I am well conversant with the facts of the case.

2. That a reply to the writ petition has already been filed in the matter however, during the course of hearing of the matter on 04.02.2015 Hon"ble court wanted to know as to whether at any point of time the pendency of certain cases against the respondent No. 2 were taken into consideration specially after filing of the writ petition.

3. That it is submitted that the retainership order of respondent No. 2, Annexure-1, was issued on 22.1.14 and pursuant thereto the respondent No. 2 took charge with effect from 23.1.14.

4. That Smt. Richa, ex-divorced wife of respondent No. 2 had filed a complaint and thereafter position was explained by respondent No. 2 in writing to the Chief Minister which was considered and having found that the cases are essentially outcome of matrimonial disputes and no conviction has been recorded by any court of law and therefore, has no bearing upon continuance of retainership, no further action was thus found to be necessary.

5. The matter was how, also sent to the learned AG who also having considered the issue opined that no further action is required."

44. The averments in the affidavit of Shri Arvind Kumar Sharma, clearly bring on record that prior to appointment of Dr. Abhinav Sharma, respondent No. 2 as an Additional Advocate General on 22.01.2014, the State Government was not aware of the criminal cases pending against him, and further that the complaints made by Smt. Richa Sharma, his ex-wife, have been taken very lightly by the State Government, as outcome of the matrimonial disputes, in which no

conviction has been recorded by any Court of law. It has also been stated that these complaints have no bearing upon continuance of retainership, and thus, no further action was found to be necessary.

45. We find it extremely disturbing with the approach of the State Government in the appointment of Dr. Abhinav Sharma, despite the fact that the Court has taken cognizance against him, in the matters referred to as above, and the pendency of large number of criminal cases lodged against him, in which cognizance has been taken and the offence is as serious as the offence of rape under Section 376 IPC. It is apparent from the pleadings and the affidavit, filed in pursuance to the direction issued by us, that the Advocate General of the State was not aware of the allegations, and the pendency of criminal cases, and its effect on the appointment and continuance of the respondent No. 2 in the Office of the Additional Advocate General.

46. In Special Reference No. 1 of 1998, RE, (supra), the term "effective consultation" would mean all the constitutional functionaries involved in the process with the constitutional office, has been discussed, and it was held, that all consultations involved, must be in writing and the opinions must be transmitted. It was further held that the expression of opinion in writing is an inbuilt check on exercise of the power, and ensures due circumspection. Exclusion of justiciability in this sphere should prevent any inhibition against the expression of a free and frank opinion.

47. In N. Kannadasan v. Ajoy Khose And Others(supra), in which the question of appointment in the Office of the President, State Consumer Disputes Redressal Commission of a person, who was not confirmed after being appointed as an Additional Judge of the Madras High Court on the allegations against him, was under consideration, the Supreme Court observed, after considering the opinions in State of Haryana and Another Vs. National Consumer Awareness Group and Others, AIR 2005 SC 2356 : (2006) 3 CPJ 8 : (2005) 5 JT 151 : (2005) 5 SCC 284 : (2005) SCC(L&S) 530 : (2005) 1 SCR 1158 : (2005) 3 SLJ 156 ; Ashish Handa Vs. Chief Justice of High Court of Punjab and Haryana and others, (1996) 3 AD 105 : AIR 1996 SC 1308 : (1996) 3 JT 248 : (1996) 2 SCALE 771 : (1996) 3 SCC 145 : (1996) 3 SCR 474 : (1996) 1 UJ 844 ; and Union of India (UOI) and Others Vs. Kali Dass Batish and Another, AIR 2006 SC 789 : (2006) 108 FLR 746 : (2006) 1 JT 170 : (2006) 1 SCALE 190 : (2006) 1 SCC 779 : (2006) SCC(L&S) 225 : (2006) 1 SCR 261 : (2006) 2 SLJ 201 : (2006) AIRSCW 227 : (2006) 1 Supreme 187 , that on the lack of effective consultation, which includes consultation in writing and consideration of the material, which must be placed before the authorities for effective consultation, the superior courts may not only issue a writ of quo warranto but also a writ in the nature of quo warranto. It is also entitled to issue a writ of declaration which would achieve the same purpose, and that in the absence of due consultation process, the appointment of Shri N. Kannadasan was vitiated in law.

48. Lately, the Supreme Court had laid great emphasis on probity in governance,

sanctity of individual dignity, sacrosanctity of rule of law, certainty and sustenance of independence of judiciary, efficiency and acceptability of bureaucracy, credibility of institutions, integrity and respectability of those who run the institutions and prevalence of mutual deference amongst all the wings of the State, to be imperative in governance. These are not only to be treated as essential concepts and remembered as glorious percepts, but also to be practised so that in the conduct of every individual they are concretely and fruitfully manifested. In a recent judgment in Krishnamoorthy Vs. Sivakumar and Others(2015) 1 RCR(Civil) 921 : (2015) 2 SCALE 1 : (2015) 3 SCC 467 , Hon"ble Supreme Court has observed as follows:--

"30. Having stated about the choice of a voter, as is requisite in the case at hand, we are required to dwell upon the failure to disclose the criminal cases pending against a candidate and its eventual impact; whether it would come within the concept of undue influence and thereby corrupt practice as per Section 123(2) of the 1951 Act. To appreciate the said facet, the sanctity of constitutional democracy and how it is dented by the criminalisation of politics are to be taken note of. The importance of constitutional democracy has been highlighted from various angles by this Court in S. Raghbir Singh Gill V.S. Gurcharan Singh Tohra[13], S.S. Bola V. B.D. Sardana[14], State of U.P.V. Jai Bir Singh [15], Reliance Natural Resources Ltd., V. Reliance Industries Ltd.[16], Ram Jethmalani V. Union of India [17] and State of Maharashtra V. Saeed Sohail Sheikh[18].

33. Recently, in Manoj Narula V. Union of India [21], the Constitution Bench harping on the concept of systemic corruption, has been constrained to state thus:

"12. It is worth saying that systemic corruption and sponsored criminalisation can corrode the fundamental core of elective democracy and, consequently, the constitutional governance. The agonised concern expressed by this Court on being moved by the conscious citizens, as is perceptible from the authorities referred to hereinabove, clearly shows that a democratic republic polity hopes and aspires to be governed by a government which is run by the elected representatives who do not have any involvement in serious criminal offences or offences relating to corruption, casteism, societal problems, affecting the sovereignty of the nation and many other offences. There are recommendations given by different committees constituted by various Governments for electoral reforms. Some of the reports that have been highlighted at the Bar are (i) Goswami Committee on Electoral Reforms (1990), (ii) Vohra Committee Report (1993), (iii) Indrajit Gupta Committee on State Funding of Elections (1998), (iv) Law Commission Report on Reforms of the Electoral Laws (1999), (v) National Commission to Review the Working of the Constitution (2001), (vi) Election Commission of India - Proposed Electoral Reforms (2004), (vii) the Second Administrative Reforms Commission (2008), (viii) Justice J.S. Verma Committee Report on Amendments to Criminal Law (2013), and (ix) Law Commission Report (2014).

13. Vohra Committee Report and other reports have been taken note of on various occasions by this Court. Justice J.S. Verma Committee Report on Amendments to Criminal Law has proposed insertion of Schedule 1 to the 1951 Act enumerating offences under IPC befitting the category of "heinous" offences. It recommended that Section 8(1) of the 1951 Act should be amended to cover, inter alia, the offences listed in the proposed Schedule 1 and a provision should be engrafted that a person in respect of whose acts or omissions a court of competent jurisdiction has taken cognizance under Sections 190(1)(a), (b) or (c) of the Code of Criminal Procedure or who has been convicted by a court of competent jurisdiction with respect to the offences specified in the proposed expanded list of offences under Section 8(1) shall be disqualified from the date of taking cognizance or conviction, as the case may be. It further proposed that disqualification in case of conviction shall continue for a further period of six years from the date of release upon conviction and in case of acquittal, the disqualification shall operate from the date of taking cognizance till the date of acquittal."

34. Criminalisation of politics is absolutely unacceptable. Corruption in public life is indubitably deprecable. The citizenry has been compelled to stand as a silent, deaf and mute spectator to the corruption either being helpless or being resigned to fate. Commenting on corruption, the court in *Niranjan Hemchandra Sashittal V. State of Maharashtra*[22], was constrained to say thus:

"It can be stated without any fear of contradiction that corruption is not to be judged by degree, for corruption mothers disorder, destroys [pic]societal will to progress, accelerates undeserved ambitions, kills the conscience, jettisons the glory of the institutions, paralyses the economic health of a country, corrodes the sense of civility and mars the marrows of governance. It is worth noting that immoral acquisition of wealth destroys the energy of the people believing in honesty, and history records with agony how they have suffered. The only redeeming fact is that collective sensibility respects such suffering as it is in consonance with the constitutional morality."

49. The Supreme Court held that the non-disclosure of the information of pending criminal cases in the matter of Panchayat Elections, will vitiate the elections, even if there was no challenge to the elections on the ground of corrupt practice. It was held that the factum of suppression of the cases relating to embezzlement was established, and in the circumstances, there was no need to consider whether there was any material particulars relating to the corrupt practice. The Supreme Court further held, in paragraph 86, that disclosure of criminal antecedents of a candidate, especially, pertaining to heinous or serious offence or offences relating to corruption or moral turpitude at the time of filing of nomination paper, as mandated by law, is a categorical imperative. The non-disclosure of the offences pertaining to such areas, creates an impediment in the free exercise of electoral right, and would amount to undue influence.

50. In the present case, it is apparent from the record that the fact regarding

pendency of the cases was not within the knowledge of the Advocate General, or the State Government, and thus, there was no effective consultation in the appointment of the respondent No. 2 as an Additional Advocate General. The criminal cases, at the stage in which they are pending, are no longer mere allegations by the estranged wife. These are extremely serious in nature, inasmuch as his legally wedded wife has alleged fraud and deceit by her husband-respondent No. 2, of having obtained an ex parte decree of divorce without notice to her, on manipulations of the legal proceedings, in which she was shown to have been served with a notice by the Court. The respondent No. 2, instead of contesting the proceedings, is engaged in filing the revision petitions against the orders, in which the Court had taken cognizance against him, for merely fixing the dates in the matters. The Revisional Courts have consistently rejected his revision petitions against the order, in which cognizance has been taken for the offences under Sections 193, 196, 198, 420, 429 read with 120B IPC, the revision petition was dismissed and there is no interim order operating in the Criminal Misc. Petition pending in the High Court. Smt. Richa Sharma has also lodged an FIR against the respondent No. 2 for the offences under Sections 498-A and 406 IPC, and Section 4 of the Dowry Prohibition Act on 06.08.2011, prior to filing of a complaint on 19.08.2011, of playing fraud and obtaining an ex parte decree of divorce, and in which, on a Protest Petition against the Final Report filed by the police, reinvestigation was ordered, against which a criminal misc. application at the instance of Smt. Richa Sharma, was decided directing the trial Court to pass an appropriate order, as to whether further investigation in the matter is called for or not. The trial Court has ordered further investigation on 04.09.2013, which was again challenged by Dr. Abhinav Sharma by filing Criminal Revision No. 36/2013, which was allowed, in part, holding that an effective opportunity of hearing was to be given to the respondent No. 2 before passing an order of further investigation. Dr. Abhinav Sharma thereafter filed a Transfer Application stalling the proceedings of the Court. A very serious offence was alleged by Smt. Richa Sharma against Dr. Abhinav Sharma in a Criminal Complaint No. 180/2012, of rape against her, on full information possessed only by the respondent No. 2 that he had obtained an ex parte decree of divorce, in which the statement was recorded and an enquiry was ordered. The order directing enquiry was challenged by Dr. Abhinav Sharma by filing a revision petition, which was confirmed vide order dated 24.09.2012, directing that instead of enquiry being conducted by the police, it should be conducted by a Magistrate.

51. Dr. Abhinav Sharma is not only accused in the matters of serious offences alleged by his ex-wife, in which cognizance has been taken, the disciplinary proceedings are also pending against him in the Bar Council of Rajasthan. There is no averment in the reply that these proceedings were in the knowledge of the Advocate General, or the State Government, at the time of appointment of the respondent No. 2. The defence on his appointment despite pendency of these criminal cases treating them to be only matrimonial disputes, will not only

jeopardize the rights of his wife in prosecuting the cases, as he will undoubtedly have considerable influence not only on the Prosecutors, but also on the Courts while holding the Office of the Additional Advocate General. His continuance in the Office has seriously jeopardized the institutional integrity/of the Office of the Additional Advocate General.

52. On the aforesaid facts and circumstances, we also find that the State Government has not only grossly compromised the institutional integrity by appointing a person, who has not cleared himself of the allegations of cheating, deceit, fraud and rape by his own wife, and is facing disciplinary proceedings before the Bar Council of Rajasthan, his appointment is a brazen act of official arbitrariness. The State Government does not appear to have any concern with the Office, which will not only influence but will also prejudice a large number of persons, who appear as litigants in the Courts, of the integrity of the Advocates of the State conducting the cases in the Court, and the Senior Officers in the State, who will be in consultation with the respondent No. 2, on important matters of the State.

53. On the aforesaid discussion, we are of the view that Dr. Abhinav Sharma, respondent No. 2, has not only withheld the fact of the pendency of the criminal cases pending against him on the date of his appointment on 22.01.2014 as an Additional Advocate General, which affected his personal integrity, but in the absence of such materials with the functionaries, with whom an effective consultation was required to be made, the consultation was totally ineffective and breached the procedure of appointment of an Additional Advocate General under the Department Manual, 1999. The lack of personal integrity of the respondent No. 2 in holding the Office, has compromised the institutional integrity of the Office of the Additional Advocate General. The State Government has taken the matter very lightly in treating it to be only the matrimonial disputes, initiated on the complaints of his wife, which are personal to respondent No. 2. It is difficult to believe that the State Government would, on the facts and circumstances of the case, accept the explanation of the respondent No. 2, which was also placed before us, to treat the offences, in which cognizance has been taken against the respondent No. 2 of having played fraud with his wife in obtaining an ex parte decree of divorce and thereafter indulged in the activity in which she has alleged an offence of rape against her, as offences, the consequence of which could have been ignored by the State Government.

54. For the aforesaid reasons, the writ petition is allowed, and it is declared that Dr. Abhinav Sharma, respondent No. 2, was not eligible to be appointed as an Additional Advocate General of the State, in the absence of personal integrity, and for lack of effective consultation, which has compromised the institutional integrity of the Office. A writ of quo warranto is issued, setting aside the order of his appointment as an Additional Advocate General of the State of Rajasthan, dated 22.01.2014. The petitioner will be entitled to a cost of Rs. 10,000/-, from

the State Government.