

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

W.P.No.14445 of 2023

Between:

B. Ramakoteswara Rao

... Petitioner

And

§ 1. The State of Andhra Pradesh, rep. by its Principal Secretary, Home Department, A.P. Secretariat Buildings, Velagapudi, Amaravathi, Guntur District.

2. The High Court of Andhra Pradesh, rep. by its Registrar General, Nelapadu, Amaravathi, Guntur District.

3. The Director of Prosecutions, Government of Andhra Pradesh, 1st Floor, New HOD Building, M.G. Road, Vijayawada.

4. Mr. Jalla Sudharashana Reddy, S/o. not known, presently working as Director of Prosecutions, Government of Andhra Pradesh, 1st Floor, New HOD Building, M.G. Road, Vijayawada.

... Respondents

Date of Judgment pronounced on : 21-02-2024

**HON'BLE SRI JUSTICE RAVINATH TILHARI
&
HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO**

1. Whether Reporters of Local newspapers
May be allowed to see the judgments? : Yes/No
2. Whether the copies of judgment may be marked
to Law Reporters/Journals: : Yes/No
3. Whether the Lordship wishes to see the fair copy
Of the Judgment? : Yes/No

***IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI**

***HON'BLE SRI JUSTICE RAVINATH TILHARI**

&

HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

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4. Mr. Jalla Sudharashana Reddy, S/o. not known, presently working as Director of Prosecutions, Government of Andhra Pradesh, 1st Floor, New HOD Building, M.G. Road, Vijayawada.

... Respondents

- | | |
|--------------------------------|---|
| ! Counsel for petitioner | :Sri M. Ravindranath Reddy,
Senior Counsel representing Sri B. Srinarayana |
| ^Counsel for Respondents 1 & 3 | : Advocate General |
| ^Counsel for Respondent No.2 | : Sri Vivek Chandrasekar S. |
| ^Counsel for Respondent No.4 | : Sri V.R. Reddy Kovvuri |

<GIST:

>HEAD NOTE:

? Cases referred:

- ¹ (1990) 4 SCC 191
- ² (2015) 6 SCC 158
- ³ (2011) 4 SCC 1
- ⁴ 2013 SCC ONLINE AP 53
- ⁵ (2013) 5 SCC 1
- ⁶ 2015 SCC ONLINE ALL 3719(DB)
- ⁷(1983) 2 SCC 145
- ⁸(2023) 5 SCC 661
- ⁹ (2009) 8 SCC 273
- ¹⁰Writ – C.No.27571 of 2022, dated 19.05.2023
- ¹¹1989 Cr.L.J 1309
- ¹² (2006) SCC OnLine H.P. 66
- ¹³ (1995) 3 SCC 37
- ¹⁴1986 (Supp) SCC 584
- ¹⁵2022 SCC ONLINE SC 510
- ¹⁶ (2003) 7 SCC 403
- ¹⁷(2006) 2 SCC 482
- ¹⁸ (2009) 7 SCC page 1
- ¹⁹ (2010) SCC Online HP 3695 (D.B)
- ²⁰ (2006) 1 SCC 779
- ²¹ (2014) 14 SCC 50
- ²² (1994) 2 SCC 204
- ²³(2016) 6 SCC 1
- ²⁴ (2014) 14 SCC 50
- ²⁵ (1994) 2 SCC 204
- ²⁶(2016) 6 SCC 1

IN THE HIGH COURT OF ANDHRA PRADESH: AMARAVATI**HON'BLE SRI JUSTICE RAVINATH TILHARI****&****HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO****WRIT PETITION No.14445 of 2023***(Through physical mode)*

B. Ramakoteswara Rao

...Petitioner

Versus

1. The State of Andhra Pradesh, rep. by its Principal Secretary, Home Department, A.P. Secretariat Buildings, Velagapudi, Amaravathi, Guntur District.
2. The High Court of Andhra Pradesh, rep. by its Registrar General, Nelapadu, Amaravathi, Guntur District.
3. The Director of Prosecutions, Government of Andhra Pradesh, 1st Floor, New HOD Building, M.G. Road, Vijayawada.
4. Mr. Jalla Sudharashana Reddy, S/o. not known, presently working as Director of Prosecutions, Government of Andhra Pradesh, 1st Floor, New HOD Building, M.G. Road, Vijayawada.

....Respondents

Counsel for the petitioner: Sri M. Ravindranath Reddy, Sr. Counsel
Representing Sri B. Srinarayana

Counsel for respondents 1 & 3 : Advocate General

Counsel for respondent No.2 : Sri Vivek Chandrasekhar S.

Counsel for respondent No.4 : Sri V.R. Reddy Kovvuri

ORDER:

(per Hon'ble Sri Justice R.Raghunandan Rao)

Heard Sri M. Ravindranath Reddy, learned Senior Counsel appearing for Sri B. Srinarayana learned counsel for the petitioner, learned Advocate General for respondents 1 and 3, Sri Vivek Chandrasekhar S., learned counsel appearing for respondent No.2 and Sri V.R. Reddy Kovvuri, learned counsel appearing for respondent No.4.

2. The petitioner, who is presently working as the Additional Director of Prosecutions, Andhra Pradesh, being aggrieved by the appointment of the 4th respondent as the Director of Prosecution, Andhra Pradesh, has filed the present writ petition challenging the said appointment and also sought other reliefs. The prayer in the writ petition after it's amendment, allowed by the order of this Court, dated 03.10.2023, in I.A.No.2 of 2023 reads as follows:

- i) declare the concurrence accorded by the 2nd respondent and the appointment of the 4th respondent as Director of Prosecutions, Government of Andhra Pradesh vide G.O.Rt.No.552, Home (Courts-A) Department, Dated 22.05.2023, as Arbitrary, Malafide and illegal as it is
 - a) contrary to Sections 2(u), 24(6), 24(9), 25-A and 301 of the Code of Criminal Procedure, 1973 (Cr.P.C.) read with Rule 3(1) of the Andhra Pradesh Prosecution Service Rules, 1992 ('the 1992 Rules' for brevity), and / or;

- b) contrary to Section 78 of A.P. State Reorganization Act of 2014 and / or;
- c) contrary to Section 4(1) of the A.P. (Regulation of Appointments to Public Service & Rationalisation of Staff Pattern & Pay Structure) Act, 1994;
- d) contrary and/or violative of the orders dated 05-08-2021 the Hon'ble Division Bench of this Hon'ble Court passed in W.P.No.15377 of 2021

and

- ii) set aside G.O.Ms.No.56 Home (Court-A) Department dated 15.06.2021
- iii) set aside the G.O.Rt.No.552 Home (Courts-A) Department, dated 22.05.2023
- iv) direct the Respondents to appoint me as the Director of Prosecutions by promotion

and

- v) pass such other order or orders as this Hon'ble Court deems fit and proper in the circumstances of the case.

3. The factual matrix of the case, according to the petitioner is as follows:

A. The petitioner herein, who was a practicing advocate, was selected and appointed as an Assistant Public Prosecutor on 06.11.1998. He was promoted from time to time, in the hierarchy of posts, created under the Andhra Pradesh Prosecution Service Rules, 1992 (hereinafter referred to as the 1992 Rules). He was promoted to the post of Additional Director, on

15.02.2019. He was also given Full Additional Charge as Director of Prosecutions on 21.02.2019.

B. The 1st respondent, in 2019, initiated the process for appointment of the Director of Prosecutions and sought the views of the Director of Prosecutions. At that stage, the 4th respondent gave a representation to the Hon'ble Chief Minister, in the month of September, 2019, seeking his appointment as Director of Prosecutions and the said request was forwarded to the 1st respondent. Thereupon, the 1st respondent sought the views of the Director of Prosecutions and the petitioner, who was then working as Director of Prosecutions (FAC), had forwarded his remarks, under letter dated 11.10.2019, including the contention that only a member of the cadre of Prosecuting officers established under the 1992 Rules, can be appointed as Director of Prosecutions.

C. After receipt of the said remarks, the 1st respondent forwarded the names of two advocates, who were not part of the cadre, to the 2nd respondent vide letter dated 05.11.2019 and sought concurrence of the 2nd respondent under Section 25-A of Cr.P.C. While this request was under consideration, by the 2nd respondent, a further letter dated 27.11.2019 was sent by the 1st respondent to the 2nd respondent to include the name of the 4th respondent in the above panel. The 2nd respondent, in response to these

requests, by a letter, dated 07.01.2020, sought clarification from the 1st respondent on the following issues:

- i) The setup of Directorate of Prosecutions including the posts of Director of Prosecution and Deputy Director of Prosecution.
- ii) The norms decided for appointment or Rules if any framed by the Government for appointment of Director of Prosecution and Deputy Director of Prosecution The terms and conditions of employment for the post of Director of Prosecution and Deputy Director of Prosecution
- iii) In case the Director of Prosecution and Deputy Director of Prosecution are found unbecoming of their conduct while working in the above posts, what are the checks over them.
- iv) The terms and conditions, payment of salary and other emoluments as decided by the Government.
- v) The aforesaid terms and conditions are relevant for the posts of Director of Prosecution and Deputy Director of Prosecution, as they are Executive Level Posts in the Government. Public Prosecutors, Addl. Public Prosecutors in the District Courts and the Asst. Public Prosecutors in the Magistrate Courts who are the Government employees will be under the control of the Director of Prosecution and Deputy Director of Prosecution, and work under them; and

- vi) The above mentioned Rules for recruitment of Director of Prosecution and Deputy Director of Prosecution, have to be decided by the Government prior to the concurrence by the Hon'ble the Chief Justice.

D. At this stage, the petitioner was sent on deputation to the Police Training College, Ananthapuram as a faculty member, which was challenged by him, by way of W.P.No.3198 of 2021, seeking a declaration that his deputation was illegal and for a consequential direction to bring him back as Director of Prosecutions (FAC). This writ petition was allowed on 07.05.2021.

E. However, when the petitioner reported for joining service, he was not issued any proceedings accepting his joining report due to which he filed C.C.No.797 of 2022. The 1st respondent, by G.O.Rt.No.523, dated 18.06.2022 permitted the petitioner to join as Additional Director of Prosecutions without giving him Full Additional Charge of Director of Prosecutions.

F. The 1st respondent amended Rule 3(1) of the 1992 Rules, vide G.O.Ms.No.24 dated 04.02.2020, creating an avenue for advocates with a practice of not less than 10 years to be considered for appointment as Director of Prosecutions, apart from the existing sources. After this amendment, the 1st respondent again addressed communications dated 12.02.2020 and 16.07.2020 seeking concurrence of the 2nd respondent. The

1st respondent, again amended Rule 3(1) of the 1992 Rules, vide G.O.Ms.No.56 dated 15.06.2021, replacing the said Rule with a provision that only an advocate, having a practice of not less than 10 years, would be eligible to be appointed as Director of Prosecutions, subject to concurrence being obtained from the 2nd respondent. After this amendment, the 1st respondent again addressed a letter, dated 05.07.2021, to the 2nd respondent for concurrence for appointment of the 4th respondent as Director of Prosecutions. Aggrieved by this action of the Government, the petitioner moved this Court by way of W.P.No.15377 of 2021 for a declaration and direction to the 1st respondent to confine the consideration for the post of Director of Prosecutions only to the officers of the cadre created under the 1992 Rules. This Court, by way of interlocutory order dated 05.08.2021 in the above writ petition, held as follows:

“..... Prima facie, we are of the view that the amendment to Rule 3(1) of the Rules which provides the eligibility to the post of Director of Prosecutions as a person, who has been an advocate for not less than ten years is in conformity to Section 25-A(2) of Cr.P.C. Furthermore, such stipulation does not exclude the members of the regular prosecuting cadre from consideration in the light of Section 24(9) of Cr.P.C., which inter alia provides that the service rendered in the capacity of Public Prosecutor or Additional Public Prosecutor or Assistant Public Prosecutor or other Prosecuting Officers by whatever name shall be deemed to be a period where such person has practiced as an advocate.

..... Needless to mention the Petitioner being otherwise eligible in terms of Section 25A(2) read with 24(9) of Cr.P.C., to be considered for appointment as Director of Prosecutions, may apply for the said post without prejudice to his rights and contentions in the writ petition. With regard to the submission at the bar that the office is presently held by a member of the Indian Police Service, we observe the said post cannot be occupied by a member of the Indian police Service and if so, necessary and prompt remedial steps in the matter be taken.”

G. The petitioner, in view of the above observations of this Court, submitted an application dated 11.08.2021 to the 1st respondent, through the 3rd respondent, for being considered for the post of Director of Prosecutions. However, the 1st respondent did not choose to send this application to the 2nd respondent, nor did the 1st respondent take any action on the request of the petitioner.

H. The 2nd respondent, by proceedings dated 22.09.2021, rejected the proposal of the 1st respondent, dated 05.07.2021, seeking concurrence for appointment of the 4th respondent on two grounds, set out below:

- a) That the amended Rule 3 does not deal with the method of appointment; and
- b) That the post of Director of Prosecutions is sought to be filled up by direct recruitment and the note “c” to Rule 3 contemplates holding of examinations/selection by the State Level Recruitment Board in the Police Department.

I. In response to this communication, the 1st respondent, by letter dated 01.11.2021, sought reconsideration of its proposal dated 05.07.2021 on the ground that direct recruitment to the said post was not contemplated under the 1992 Rules. The petitioner contends that the pendency of W.P.No.15377 of 2021 or the subsistence of the interlocutory orders of this Court, dated 05.08.2021, were not brought to the notice of the 2nd respondent and there was suppression of facts by the 1st respondent. The petitioner also contends that the fact that 4th respondent, had been elected as President of the Galiveedu Mandal, Annamayya District, was also not brought to the notice of the 2nd respondent.

J. On 18.05.2023, the 2nd respondent vide Roc.No.336/SO/2021, accorded concurrence to the appointment of the 4th respondent to the post of Director of Prosecutions and the 1st respondent issued the impugned G.O.Rt.No.552, dated 22.05.2023 appointing the 4th respondent as Director of Prosecutions. Thereafter, the 4th respondent resigned from the post of President of the Mandal Praja Parishad of Galiveedu Mandal on 23.05.2023 and joined as Director of Prosecutions on 24.05.2023.

4. The 1st respondent filed a counter affidavit and subsequently an additional counter affidavit. The stand of the 1st respondent, in both these affidavits is that the procedure adopted by the 1st respondent is in accordance with the scheme set out in Section 25A of the Cr.P.C as well as the 1992 Prosecution Rules; the amendment of 1992 Prosecution Rules by

way of G.O.Ms.No.24 dated 04.02.2020 and G.O.Ms.No.56, dated 15.06.2021 were done to bring the rules in line with Section 25A of Cr.P.C and not for the purposes of ensuring that the 4th respondent is appointed as the Director of Prosecution; the issues raised by the 2nd respondent in the communications between respondent No.2 and respondent No.1 have been addressed and it is only after that process had been completed that the 2nd respondent had accorded concurrence; the contention of the petitioner that only persons in the prosecution service, set out in the rules are eligible to be appointed as Director of Prosecution is without substance; the post of Director of Prosecution does not fall within the purview of recruitment in any public service and the reference to the A.P. (Regulation of Appointments to Public Service & Rationalization of Staff Pattern & Pay Structure) Act, 1994 has no relevance; the petitioner in the absence of an enforceable right to be appointed to the post of Director of Prosecution cannot claim any fundamental right to be appointed to the said post; the appointment of the 4th respondent as Director of Prosecution, by way of G.O.Rt.No.552 dated 22.05.2023 is not contrary to the provisions of Sections 2(u), 24 and 301 of Cr.P.C; the Judgments of the Hon'ble Supreme Court in **K.J. John, Asst. Pubic Prosecutor Grade I, Palai vs. State of Kerala and Ors.,**¹ and **K.Anbazhagan vs. State of Karnataka and Ors.,**² read in conjunction with the directions of a Division Bench of this

¹ (1990) 4 SCC 191

² (2015) 6 SCC 158

Court dated 05.08.2021 in W.P.No.15377 of 2021 makes it clear that restricting the zone of consideration for the post of Director of Prosecution to an advocate having practice for a period of not less than 10 years is not in violation or derogative of the provisions of Cr.P.C or the 1992 Rules; the challenge to the amendment to the rules cannot succeed on the ground that they are in violation of the provisions of Section 78 of A.P reorganization Act of 2014.

5. The 4th respondent has filed a counter affidavit on his own behalf and on behalf of 3rd respondent. In these counter affidavits, the 4th respondent has set out his eligibility for the post of Director of Prosecution and also denied the contention of the petitioner that persons with political background cannot be considered for the post of Director of Prosecution at all.

6. The 2nd respondent has also filed a counter affidavit. In this counter affidavit it was stated that the various incumbents as the Hon'ble Chief Justice of Andhra Pradesh, had sought clarifications from the 1st respondent in relation to the method of appointment and the conflict between the prosecution rules and provisions of Cr.P.C etc., and it is only after obtaining such information that concurrence had been given. The 2nd respondent also states that the 2nd respondent had received a general complaint, from an advocate, that advocates belonging to a particular political party are under active consideration for the post of Director of

Prosecution and the same should not be permitted. This complaint was forwarded to the 1st respondent and after receiving the reply of the 1st respondent, a decision was taken to concur with the appointment of the 4th respondent as Director of Prosecution. The counter also goes to state that the substance of the said concurrence cannot be subjected to judicial review and as such nothing further remains in the writ petition.

7. The submissions of learned senior counsel and Counsel appearing for their respective parties, and the written arguments filed, raise the following issues:

ISSUES

1. Whether, the law reports and the material relied upon by the Petitioner demonstrate a clear intention to separate the prosecution service from any person with a political back ground?
2. Whether any person with a political background is automatically disqualified from being considered for the post of Director of Prosecution?
3. Whether, the provisions of Section 2(u) , 24 and 25-A of Cr.P.C. form part of one scheme of prosecution service, which requires the post of Director of Prosecution to be filled up only from the persons within the cadre set up under the 1992 prosecution rules?

4. Whether, the Director of Prosecution, appointed under Section 25A of the Criminal Procedure Code would be a Prosecutor under the provisions of section 2(u) read with section 24 of Cr.P.C.?
5. Whether, the amendments to the 1992 rules, by way of G.O. No. 24 dated 04.02.2020 and G.O.No. 56 dated 15.06.2021 are violative of Section 78 of the A.P. Reorganization Act and the principle of Legitimate Expectation?
6. Whether the post of Director of Prosecution can be filled only in accordance with the 1992 Rules read with the provisions of The Andhra Pradesh (Regulation of Appointments to Public Services And rationalization of Staff Pattern and Pay Structure) Act, 1994 (hereinafter referred to as the 1994 Act)?
7. What is the scope of Judicial review regarding the Concurrence given by the 2nd respondent?
8. Whether, the Non consideration of the petitioner for the post of Director of Prosecution is violative of the interim directions of this Court, dated 15.08.2021 in W.P.No.15377 of 2021 and has to be set aside?
9. Whether, the process of selection, of the 4th respondent as the Director of Prosecution, could be done without framing the necessary guidelines/rules governing the method of selection and the service conditions of the post of Director of Prosecution, including the period of

service and the disciplinary proceedings that could be taken up against errant Directors of Prosecution?

10. Whether the action of the 1st respondent, in appointing the 4th respondent is tainted by legal malice?

ISSUES 1 & 2:

8. Sri Ravindranath Reddy contends that the Law commission in it's various reports and the police commission in it's reports, after considering the need to separate the prosecution service from the political establishment, had recommended that an independent prosecution service needs to be established, with the Director of Prosecution as it's head, and the legislature, in pursuance of these recommendations, had incorporated various amendments to Section 24, 25 and 25-A of Cr.P.C. He relies upon paragraphs 3, 5 to 7, 11, 14 to 17, 19 20 and 23 of the 14th report of the Law Commission; paragraphs 18.20, 18.22, 18.23, 18.24 and 18.25 of the 41st report of the Law commission; paragraph 12 of the 154th report of the Law Commission and the 197th report of the Law Commission. He would submit that while the 14th report had made a general allusion to the post of Director of Prosecution, the 154th Report of the Law Commission had specifically recommended the insertion of section 25-A, in the Cr.P.C. and as such section 25-A should be interpreted in the light of the recommendations of the above reports, which require separation of the prosecuting agency from the political establishment.

9. Sri Ravindranath Reddy would also contend that, de hors the said recommendations, a politician cannot be permitted to occupy a sensitive position like the Director of Prosecution. He would submit that this would raise the question of Institutional integrity as a politician would be interested in sub serving the interests of his party and such a person cannot be impartial and free from bias. He relies upon the judgement of the Hon'ble Supreme Court in **Centre For PIL vs. Union of India**³, **P.N.S. Prakash vs. The Secretary to Government Of A.P. Legislative Affairs Justice, Law Department**⁴, **State Of Punjab vs. Salil Sabholk And Ors.**⁵ and **Gorakhpur University Aff. College Teacher Asso. and Anr., vs. State of U.P. and 4 Ors.**⁶

10. The learned Advocate general would submit that the Police Commission reports as well as the various Judgments relied upon by the learned Senior Counsel appearing for the petitioner, went into the question of the need to separate the prosecution service from the investigating agency namely the Police Department. The passages, in the law Commission reports, relied upon by the petitioner do not in any manner indicate or state that the prosecution service has to be excluded from all politicians or persons having a political background should be excluded from

³ (2011) 4 SCC 1

⁴ 2013 SCC ONLINE AP 53

⁵ (2013) 5 SCC 1

⁶ 2015 SCC ONLINE ALL 3719(DB)

the prosecution service and there has to be a separation of a prosecution service from politicians;

11. The learned Advocate General relies upon the judgements of the Hon'ble Supreme Court in **State Of Madhya Pradesh vs. Ramashanker Raghuvanshi And Anr.**,⁷ and **Anna Mathew & Ors., vs. Supreme Court Of India & Ors.**,⁸ to contend that a person with a political background is not precluded from being considered for public office or posts such as the Director of Prosecution.

12. Sri C.V. Mohan Reddy, the learned senior counsel appearing for Sri V.R. Reddy Kovvuri for the 4th respondent, would rely upon the judgements, relied upon by the learned Advocate General, to contend that a person with a political background is not barred from taking up public office or posts of the nature of Director of prosecution. He would cite the example of Justice Krishna Iyer, to contend that the country would have lost a great jurist if he had been barred from being elevated to the bench on the ground that he had been a member of a political party and a minister.

CONSIDERATION OF THE COURT:

13. The passages, in the reports of the law commission, cited by Sri Ravindranath Reddy, only go into the need to create a prosecution service which would be independent of the police department and the

⁷ (1983) 2 SCC 145

⁸ (2023) 5 SCC 661

investigative wing. This need was raised to give autonomy and a measure of protection to the prosecutors to apply their mind independently to ensure that prosecutions are carried out without bias and in accordance with law. There was no attempt to create a prosecution service which is independent of the political establishment. In fact, that question never arose before the Law commission, to consider the pros and cons of such a situation.

14. In **Mahesh Chandra Gupta vs. Union of India**⁹, the Hon'ble Supreme Court held that the scope of Judicial review in these matters is restricted to the question of eligibility of the candidate and does not extend to going into the question of suitability. This restricts the review, of this court, to the question of whether a candidate belonging to a political party is ineligible. The review of this court, on the suitability of the candidate, is restricted.

15. The Hon'ble Supreme court considered the question of whether a person with a political background is eligible for employment by the State in **State Of Madhya Pradesh vs. Ramashanker Raghuvanshi and Anr.**, (7 supra) and **Anna Mathew & Ors., vs. Supreme Court Of India & Ors.** (8 supra). In Raghuvanshi's case, the Hon'ble Supreme Court, while considering the termination of service of a school teacher on account of his affiliation, earlier, to a political organization, held in no uncertain terms, in this manner:

⁹ (2009) 8 SCC 273

2. Yet the Government of Madhya Pradesh seeks to deny employment to the respondent on the ground that the report of a Police Officer stated that he once belonged to some political organisation. It is important to note that the action sought to be taken against the respondent is not any disciplinary action on the ground of his present involvement in political activity after entering the service of the Government, contrary to some Service Conduct Rule. It is further to be noted that it is not alleged that the respondent ever participated in any illegal, vicious or subversive activity. There is no hint that the respondent was or is a perpetrator of violent deeds, or that he exhorted anyone to commit violent deeds. There is no reference to any addiction to violence or vice or any incident involving violence, vice or other crime. All that is said is that before he was absorbed in government service, he had taken part in some "RSS or Jan Sangh activities". What those activities were has never been disclosed. Neither the RSS nor the Jan Sangh is alleged to be engaged in any subversive or other illegal activity; nor are the organisations banned. Most people, including intellectuals, may not agree with the programme and philosophy of the Jan Sangh and the RSS or, for that matter, of many other political parties and organisations of an altogether different hue. But that is irrelevant. Everyone is entitled to his thoughts and views. There are no barriers. Our Constitution guarantees that. In fact members of these organisations continue to be Members of Parliament and State Legislatures. They are heard, often with respect, inside and outside the Parliament. What then was the sin that the respondent committed in participating in some political activity before his absorption into government service? What was wrong in his being a member of an organisation which is not even alleged to be devoted to subversive or illegal activities? The whole idea of seeking a police report on the

political faith and the past political activity of a candidate for public employment appears to our mind to cut at the very root of the Fundamental Rights of equality of opportunity in the matter of employment, freedom of expression and freedom of association. It is a different matter altogether if a police report is sought on the question of the involvement of the candidate in any criminal or subversive activity in order to find out his suitability for public employment. But why seek a police report on the political faith of a candidate and act upon it? Politics is no crime. Does it mean that only True Believers in the political faith of the party in power for the time being are entitled to public employment? Would it not lead to devastating results, if such a policy is pursued by each of the Governments of the constituent States of India where different political parties may happen to wield power, for the time being? Is public employment reserved for "the cringing and the craven" in the words of Mr Justice Black of the United States Supreme Court? Is it not destructive of the dignity of the individual mentioned in the Preamble of the Constitution? Is it to be put against a Youngman that before the cold climate of age and office freezes him into immobility, he takes part in some political activity in a mild manner. Most students and most young men are exhorted by national leaders to take part in political activities and if they do get involved in some form of agitation or the other, is it to be to their everlasting discredit? Some times they get involved because they feel strongly and badly about injustice, because they are possessed of integrity and because they are fired by idealism. They get involved because they are pushed into the forefront by elderly leaders who lead and occasionally mislead them. Should all these young men be debarred from public employment? Is Government service such a heaven that only angels should seek entry into it? We do not have the slightest doubt that the whole business of

seeking police reports, about the political faith, belief and association and the past political activity of a candidate for public employment is repugnant to the basic rights guaranteed by the Constitution and entirely misplaced in a democratic republic dedicated to the ideals set forth in the Preamble of the Constitution. We think it offends the Fundamental Rights guaranteed by Articles 14 and 16 of the Constitution to deny employment to an individual because of his past political affinities, unless such affinities are considered likely to affect the integrity and efficiency of the individual's service. To hold otherwise would be to introduce "McCarthyism" into India. "McCarthyism" is obnoxious to the whole philosophy of our Constitution. We do not want it.

16. In the case of Anna Mathew case, the Hon'ble Supreme Court, while considering the scope and ambit of judicial review in the matter of appointment of Judges to High Courts, had held that:

8. During the course of hearing before us, it was accepted that a number of persons, who have had political backgrounds, have been elevated as Judges of the High Courts and the Supreme Court, and this by itself, though a relevant consideration, has not been an absolute bar to appointment of otherwise a suitable person. Similarly, there have been cases where the persons recommended for elevation have expressed reservations or even criticised policies or actions, but this has not been held to be a ground to treat them as unsuitable. It goes without saying that the conduct of the Judge and her/his decisions must reflect and show independence, adherence to the democratic and constitutional values. This is necessary as the judiciary holds the centre stage in protecting and strengthening democracy and upholding human rights and Rule of Law. [*See N.*

Kannadasan v. Ajoy Khose, (2009) 7 SCC 1 : (2009) 3 SCC (Civ)

1]

17. The above judgements show that a person cannot be denied employment with the State on the ground of his political beliefs or on the ground of his political affiliations, prior to joining in the service of the State. A person cannot be declared to be ineligible on the ground that he is a member of a political party. In the present case, the 4th respondent was elected as an MPP. However, he had resigned as such, before he took up the post of Director of Prosecution. As such, the earlier political affiliations of the 4th Respondent will not make him ineligible to seek appointment as Director of Prosecution.

18. The issue of Institutional integrity considered, by the Hon'ble Supreme Court, in **Centre For PIL vs. Union Of India** (3 supra), arose out of the process of appointment of the Central Vigilance Commissioner. In this case, the Hon'ble Supreme Court took the view that the High Power Committee, constituted to make recommendations to the appointing authority, should be looking, not at the personal integrity of the candidate, but at the institutional integrity of the institution, if a particular candidate is appointed. There can be no cavil, with the said principle. However, the said question relates to the suitability of the candidate and the same would be dealt with, while considering the issue connected to the process of consultation etc.

Both these issues will have to be held against the Petitioner.

ISSUES 3 AND 4:

19. These issues are being taken up together as they are interconnected.

4. Whether, the provisions of Section 2(u), 24 and 25-A of Cr.P.C. form part of one scheme of prosecution service, which requires the post of Director of Prosecution to be filled up only from the persons within the cadre set up under the 1992 rules ?

5. Whether, the Director of Prosecution, appointed under Section 25A of the Criminal Procedure Code would be a Prosecutor under the provisions of section 2(u) read with section 24 of Cr.P.C.?

20. Sri Ravindranath Reddy submits that the judgment of the Hon'ble Supreme Court of India in **K. Anbazhagan vs. State of Karnataka and Ors.**, (2 supra) ; **K.J. John, Asstt. Public Prosecutor Grade-I, Palai vs. State of Kerala and Ors.**, (1 supra)x; and the judgment of the Hon'ble High Court of Allahabad in the case of **Kishan Kumar Pathak vs. State of U.P. and four Ors.**,¹⁰ make it clear that, the provisions of Section 2(u), 24 and 25-A of Cr.P.C., form one comprehensive scheme. Section 24 (6), of Cr.P.C., restricts appointments of Public Prosecutors and Additional Public Prosecutors to persons in the regular

¹⁰ Writ – C.No.27571 of 2022, dated 19.05.2023

cadre of prosecuting officers only. Consequently, all the posts created under the 1992 Rules would have to be treated as forming part of one cadre and no person from outside the cadre can be allowed to come in except at the stages of Category-7 and Category-5. Section 24 (9) of Cr.P.C. stipulates that prosecuting officers, "by whatever name called" are Public Prosecutors and therefore, the designation of "Director of Prosecution" does not take away the post from the cadre of prosecutors., The phrase "Advocate" set out in Section 25-A should be taken to mean only Public Prosecutors, who are serving in the cadre, created under the 1992 Rules. The appointment of the 4th respondent is clearly violative of these stipulations.

21. It is further contended that the Hon'ble high Court of Punjab and Haryana in the case of **Krishan Singh Kundu vs. State of Haryana**¹¹, after considering the 14th Law Commission Report and 4th Police Commission Report had directed the Government of Haryana to appoint a senior officer belonging to the Prosecution Agency, to be appointed as the Director of Prosecutions; The Hon'ble Supreme Court in the case of **K.J. John, Asst. Pubic Prosecutor Grade I, Palai vs. State of Kerala and Ors.**, (1 supra) had held that Section 24(6) Cr.P.C., gives a clear mandate to appoint a Public Prosecutor and Additional Public Prosecutor only from amongst the persons constituting the regular cadre of

¹¹ 1989 Cr.L.J 1309

prosecuting officers; the Division Bench of High Court of Himachal Pradesh in **Jiwan Lal Sharma vs. State of Himachal Pradesh**,¹², had held that the post of Director of Prosecutions should be held only by a person with legal and juristic background; the Hon'ble Supreme Court in **S.B. Shahane and Ors., vs. State of Maharashtra and Anr.**,¹³ had directed the constitution of a separate cadre of Assistant Public Prosecutors on District wise basis or State wise basis by creating a separate prosecution department and appointing the head of such department, who would be directly responsible to the State Government; a Division Bench of the Allahabad High Court in **Kishan Kumar Pathak vs State of U.P. and 4 Ors.**, (10 supra) should be read in a singular scheme.

22. The Learned Advocate General would submit that the Judgments of the Hon'ble Supreme Court in **K.J. John, Asst. Pubic Prosecutor Grade I, Palai vs. State of Kerala and Ors.**, (1 supra) and **K.Anbazhagan vs. State of Karnataka and Ors.**, (2 supra) relied upon by the petitioner, to contend that provisions of Section 2(u), 24 and 25A and 301 of Cr.P.C form one comprehensive scheme in which the post of Director of Prosecution and the post of Deputy Director of Prosecution are an integral part, do not lend themselves to such an interpretation. He would submit that a reading of these Judgments would show that on the facts of these cases, the Hon'ble Supreme Court was looking at the question of

¹² (2006) SCC OnLine H.P. 66

¹³ (1995) 3 SCC 37

what would amount to the cadre of prosecuting officers, referred to in Section 24(6) of Cr.P.C., and had held that the highest position within such cadre of Prosecuting Officers would be the Public Prosecutor or Additional Public Prosecutor appointed at the District level and the posts of Deputy Director or Director of Prosecution would not fall within the cadre of Prosecuting Officers mentioned in 24(6). He would submit that while prosecuting Officers in the cadre, mentioned in the 1992 Prosecution Rules should be treated as "Advocates" for purposes of Section 25A of Cr.P.C, the converse, that only such persons in the cadre should be treated as "Advocates" under 25A of Cr.P.C, would not arise.

23. The contention of the petitioner, that the post of Director of Prosecution should be treated as being the post of a Public Prosecutor with quasi judicial functions, is incorrect. The 1992 prosecution rules never contemplated that the post of Director of Prosecution, is a post to be held by a Public Prosecutor only. This can be seen from the fact that the rules, prior to amendment, provided that said posts could be filled up by either a person within the cadre created by 1992 Rules, by a Judicial Officer or by an I.P.S Officer. Neither a Judicial Officer nor an I.P.S Officer would be an advocate, who can practice or appear before the Courts and it is thus clear that the post of Director of Prosecution was never treated as a post that can be filled up only by a Prosecutor. It would thus be clear that the said

post was treated only as an administrative post and not a post which would have quasi judicial functions.

24. Sri C. V. Mohan Reddy, learned senior counsel appearing for Sri V.R. Reddy, learned Counsel appearing for the 4th respondent, would submit that the post of Director of Prosecution is only an administrative job and not a post carrying judicial or quasi judicial powers. He would further submit that Section 2(u) of Cr.P.C defines "Public Prosecutor" as a person who is appointed under Section 24, whereas the post of Director of Prosecution is under Section 25A of Cr.P.C and as such, a Director of Prosecutor is not a Public Prosecutor who can prosecute cases in the Court.

CONSIDERATION OF THE COURT:

25. The relevant provisions of Cr.P.C. are as follows:

Section 2 (u) "Public Prosecutor" means any person appointed under section 24, and includes any person acting under the directions of a Public Prosecutor;

24. Public Prosecutors.—(1) For every High Court, the Central Government or the State Government shall, after consultation with the High Court, appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors, for conducting in such Court, any prosecution, appeal or other proceeding on behalf of the Central Government or State Government, as the case may be.

(2) The Central Government may appoint one or more Public Prosecutors for the purpose of conducting any case or class of cases in any district or local area.

(3) For every district, the State Government shall appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors for the district: Provided that the Public Prosecutor or Additional Public Prosecutor appointed for one district may be appointed also to be a Public Prosecutor or an Additional Public Prosecutor, as the case may be, for another district.

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

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

(6) Notwithstanding anything contained in sub-section (5), where in a State there exists a regular Cadre of Prosecuting Officers, the State Government shall appoint a Public Prosecutor or an Additional Public Prosecutor only from among the persons constituting such Cadre:

Provided that where, in the opinion of the State Government, no suitable person is available in such Cadre for such appointment that Government may appoint a person as Public Prosecutor or Additional Public Prosecutor, as the case may be, from the panel of names prepared by the District Magistrate under sub-section (4).

Explanation.—For the purposes of this sub-section,—

- (a) “regular Cadre of Prosecuting Officers” means a Cadre of Prosecuting Officers which includes therein the post of a Public Prosecutor, by whatever name called, and which provides for promotion of Assistant Public Prosecutors, by whatever name called, to that post;

(b) "Prosecuting Officer" means a person, by whatever name called, appointed to perform the functions of a Public Prosecutor, an Additional Public Prosecutor or an Assistant Public Prosecutor under this Code.

(7) A person shall be eligible to be appointed as a Public Prosecutor or an Additional Public Prosecutor under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (6), only if he has been in practice as an advocate for not less than seven years.

(8) The Central Government or the State Government may appoint, for the purposes of any case or class of cases, a person who has been in practice as an advocate for not less than ten years as a Special Public Prosecutor: 3 [Provided that the Court may permit the victim to engage an advocate of his choice to assist the prosecution under this sub-section.

(9) For the purposes of sub-section (7) and sub-section (8), the period during which a person has been in practice as a pleader, or has rendered (whether before or after the commencement of this Code) service as a Public Prosecutor or as an Additional Public Prosecutor or Assistant Public Prosecutor or other Prosecuting Officer, by whatever name called, shall be deemed to be the period during which such person has been in practice as an advocate.

25. Assistant Public prosecutors.—(1) The State Government shall appoint in every district one or more Assistant Public Prosecutors for conducting prosecutions in the Courts of Magistrates.

(1A) The Central Government may appoint one or more Assistant Public Prosecutors for the purpose of conducting any case or class of cases in the Courts of Magistrates.

(2) Save as otherwise provided in sub-section (3), no police officer shall be eligible to be appointed as an Assistant Public Prosecutor.

(3) Where no Assistant Public Prosecutor is available for the purposes of any particular case, the District Magistrate may appoint any other person to be the Assistant Public Prosecutor in charge of that case: Provided that a police officer shall not be so appointed—

- (a) if he has taken any part in the investigation into the offence with respect to which the accused is being prosecuted; or
- (b) if he is below the rank of Inspector.

25A. Directorate of Prosecution.—(1) The State Government may establish a Directorate of Prosecution consisting of a Director of Prosecution and as many Deputy Directors of Prosecution as it thinks fit.

(2) A person shall be eligible to be appointed as a Director of Prosecution or a Deputy Director of Prosecution, only if he has been in practice as an advocate for not less than ten years and such appointment shall be made with the concurrence of the Chief Justice of the High Court.

(3) The Head of the Directorate of Prosecution shall be the Director of Prosecution, who shall function under the administrative control of the Head of the Home Department in the State.

(4) Every Deputy Director of Prosecution shall be subordinate to the Director of Prosecution.

(5) Every Public Prosecutor, Additional Public Prosecutor and Special Public Prosecutor appointed by the State Government under sub-section (1), or as the case may be, sub-section (8), of section 24 to conduct cases in the High Court shall be subordinate to the Director of Prosecution.

(6) Every Public Prosecutor, Additional Public Prosecutor and Special Public Prosecutor appointed by the State Government under sub-section (3), or as the case may be, sub-section (8), of section 24 to conduct cases in District Courts and every Assistant Public Prosecutor appointed under sub-section (1) of section 25 shall be subordinate to the Deputy Director of Prosecution.

(7) The powers and functions of the Director of Prosecution and the Deputy Directors of Prosecution and the areas for which each of the Deputy Directors of Prosecution have been appointed shall be such as the State Government may, by notification, specify.

(8) The provisions of this section shall not apply to the Advocate General for the State while performing the functions of a Public Prosecutor.

301. Appearance by Public Prosecutors.—(1) The Public Prosecutor or Assistant Public Prosecutor in charge of a case may appear and plead without any written authority before any Court in which that case is under inquiry, trial or appeal.

(2) If in any such case any private person instructs a pleader to prosecute any person in any Court, the Public Prosecutor or Assistant Public Prosecutor in charge of the case shall conduct the prosecution, and the pleader so instructed shall act therein under the directions of the Public Prosecutor or Assistant Public Prosecutor, and may, with the permission of the Court, submit written arguments after the evidence is closed in the case

26. The case of the petitioner is that section 24 (6) mandates that, all posts in the cadre of prosecuting officers should be recruited/promoted from within the said cadre and since the post of

Director of Prosecution is part of the cadre, created under the 1992 rules, only members, in the cadre, are eligible to be appointed as director of Prosecution. This raises the question as to what constitutes the regular cadre of prosecuting officers referred to under section 24 (6) of Cr.P.C. and whether the cadre created under the 1992 rules can be equated with the cadre envisaged under the provisions of Section 24 to 25 A.

27. The provisions of Section 24 (6) and other sub sections of Section 24 of Cr.P.C. came to be considered by the Hon'ble Supreme Court, in the case of **K.J. John, Asst. Public Prosecutor Grade I, Palai vs. State of Kerala and Ors.**, (1 supra). In this case, the Hon'ble Supreme Court, interpreted the term "a regular cadre of prosecuting officers", mentioned in Section 24 (6) and the explanation attached thereto, in the following manner:

20. A combined reading of sub-section (6) and sub-section (9) of Section 24 gives a clue to the intention of the legislature in determining the scope of the expression "regular cadre of Prosecuting Officers" occurring in sub-section (6). The intention of introducing sub-section (6) and the deeming fiction in sub-section (9) was in order to safeguard the promotional rights of Prosecuting Officers in such of the States where there is already in existence regular cadre consisting of a hierarchy of Prosecuting Officers going to the top level of Additional Public Prosecutors and Public Prosecutors. In sub-section (9) the expression "Prosecuting Officers" has been used as taking in any persons holding the post of Public Prosecutor, Assistant Public Prosecutor or any other Prosecuting Officer by whatever name called. Sub-section (6) independently can grant no benefit to the Prosecuting Officers unless the clause of deeming fiction contained in sub-section (9) makes them eligible for appointment as a Public Prosecutor or Additional Public Prosecutor. Sub-section (9) clearly speaks with regard to the service rendered as a Public Prosecutor or as Additional Public

Prosecutor, or Assistant Public Prosecutor or other Prosecuting Officer, by whatever name called to be counted as the period as if such person had been in practice as an advocate for the purposes of sub-section (7) and sub-section (8). Thus we are clearly of the view that the expression "regular cadre of Prosecuting Officers" contained in sub-section (6) of Section 24 must comprise a regular cadre of Prosecuting Officers going up to the level of Additional Public Prosecutor and Public Prosecutor. It may be important to note that so far as the State of Kerala is concerned under Rule (5) of the Kerala Government Law Officer (Appointment and Conditions of Service) and Conduct of Cases Rules, 1978, it has been stated that the Legal Advisor to the Vigilance Department, Additional Legal Advisor to the Vigilance Department and Assistant Public Prosecutor Grade I shall belong to the State cadre in the sense that for the purpose of appointment, probation, seniority, discharge of probationers and approved probationers for want of vacancy, the State shall be the unit whereas in the case of Assistant Public Prosecutor Grade II, the district concerned shall be the unit for all such purposes. Thus if we take the argument of learned counsel for the appellant to its logical conclusion, the result would be that in a State if there existed a cadre of Prosecuting Inspectors or Assistant Public Prosecutors only in that case also the State Government would be bound to appoint Public Prosecutor and Additional Public Prosecutor only from among such cadre under sub-section (6) of Section 24. It could not have been the intention of the legislature while enacting sub-section (6) of Section 24 of the Code. It was also contended on behalf of the petitioners that in case the meaning to the expression "regular cadre of Prosecuting Officers" under sub-section (6) of Section 24 is given as to consist of a regular cadre of Prosecuting Officers going up to Public Prosecutor at the top, then there is no benefit to such persons by enacting sub-sections (6) and (9) in Section 24 of the Code. We find no force in this contention. The basic intention of the legislature was to appoint Public Prosecutors and Additional Public Prosecutors from the advocates having at least seven years practice. Section 24 as initially contained in Section 24 of the Code did not make any Prosecuting Officer even of the cadre of Public Prosecutor prior to 1973 as eligible for being appointed as Public Prosecutor or Additional Public Prosecutors, they were made eligible by substituting Section 24 by the Amending Act of 1978 by introducing a new provision under sub-section (9) of Section 24. In this background when we consider the provision of sub-section (6) of Section 24 which makes it incumbent to appoint Public Prosecutor and Additional Public Prosecutors only from a regular cadre of Prosecuting Officers, it can only be applied in

case of such regular cadre which may go up to the level of Public Prosecutor.

28. The Hon'ble Supreme Court considered this issue again in the case of **K.Anbazhagan vs. State of Karnataka and Ors.**, (2 supra). In this case, a criminal trial had been transferred from the State of Tamil Nadu to the State of Karnataka. The transferred case, was prosecuted by a prosecutor appointed, for the trial court, by the State of Karnataka, and ended in a conviction. The accused filed an appeal before the High Court of Karnataka. This appeal was defended by the prosecutor appointed for the trial court. The defense of the case by the said prosecutor was challenged. The argument, in favour of the prosecutor, was that he could defend the appeal, in the High Court, on the basis of his appointment in the trial court and in any event he was appointed for such purpose by the State of Tamil Nadu. The issue before the Hon'ble Supreme Court was whether the State of Tamil Nadu could appoint the public prosecutor, for defending the case in the High Court of Karnataka. The further issue was whether the public prosecutor, appointed for the trial court, could continue to defend the appeal in the High court. There was a difference of opinion between the learned Judges, in the Division bench, and the same was referred to a full Bench. The Full bench, after referring to all the provisions, extracted above, held as follows:

28. The aforesaid provisions have to be appreciated in a schematic context. All the provisions reproduced hereinabove

are to be read and understood as one singular scheme. They cannot be read bereft of their text and context. If they are read as parts of different schemes, there is bound to be anomaly. Such an interpretation is to be avoided, and the careful reading of the Criminal Procedure Code, in reality, avoids the same. The dictionary clause in Section 2(u) only refers to a person appointed under Section 24 CrPC and includes any person acting under the directions of a Public Prosecutor. The class or status of the Public Prosecutor is controlled by Sections 24 and 25-A CrPC. On a careful x-ray of the provisions of Section 24 it is clearly demonstrable that Section 24(1) has restricted the appointment of Public Prosecutor for the High Court, for the provision commences with words "for every High Court". Sub-section (3) deals with the appointment of Public Prosecutor or Additional Public Prosecutor for the districts. There is a procedure for appointment with which we are not concerned. Sub-section (8) of Section 24 deals with the appointment of Special Public Prosecutor for any case or class of cases. A Public Prosecutor who is appointed in connection with a district his working sphere has to be restricted to the district unless he is specially engaged to appear before the higher court. A Special Public Prosecutor when he is appointed for any specific case and that too for any specific court, it is a restricted appointment. In this context Section 25-A of the Code renders immense assistance. The State Government is under an obligation to establish a Directorate of Prosecution. Section 25-A clearly stipulates that Public Prosecutor, Additional Public Prosecutor and Special Public Prosecutor who are appointed by the State Government under sub-section (1) or under sub-section (8) of Section 24 to conduct cases in the High Court, shall be subordinate to the Director of Prosecution. Sub-section (6) postulates that the three categories named therein appointed by the State Government to conduct cases in the district courts shall be subordinate to the Deputy Director of Prosecution. Thus, the scheme makes a perceptible demarcation and

compartmentalisation for the Public Prosecutor in the High Court and the district courts.

41. In view of our preceding analysis, we proceed to record our conclusions in seriatim:

41.1. The State of Tamil Nadu had no authority to appoint the fourth respondent, Bhavani Singh as the Public Prosecutor to argue the appeal.

41.2. It is the State of Karnataka which is the sole prosecuting agency and it was alone authorised to appoint the Public Prosecutor.

41.3. The appointment of the fourth respondent, Bhavani Singh as the Public Prosecutor for the trial did not make him eligible to prosecute the appeal on behalf of the prosecuting agency before the High Court.

41.4. The appointment of a Public Prosecutor, as envisaged under Section 24(1) CrPC in the High Court is different than the appointment of a Public Prosecutor for the District Courts; and that the notification appointing the fourth respondent did not enable him to represent the State of Karnataka in appeal.

41.5. Though the appointment of the fourth respondent is bad in law, yet there is no justification to direct for de novo hearing of the appeal, regard being had to the duties of the Appellate Judge, which we have enumerated hereinbefore, especially in a case pertaining to the Prevention of Corruption Act, 1988.

41.6. The appellant as well as the State of Karnataka are entitled to file their written note of submissions within the framework, as has been indicated in para 40.

41.7. The learned Appellate Judge, after receipt of our judgment sent today, shall peruse the same and be guided by the observations made therein while deciding the appeal.

42. Consequently, the appeal stands disposed of in above terms.

29. The Hon'ble Supreme Court, in **K.J. John, Asst. Public Prosecutor Grade I, Palai vs. State of Kerala and Ors.**, (1 supra), held that the "Regular Cadre of Prosecuting Officers" mentioned in sub-section (6) would be a cadre of Prosecuting Officers which, at the most, would include the post of a Public Prosecutor, at the District Court, by whatever name called, and which provides for promotion of Assistant Public Prosecutors, by whatever name called, to that post. There is no observation by the Hon'ble Supreme Court that this cadre of prosecuting officers would include the Director of Prosecution or Deputy Director of Prosecution. In fact, the Hon'ble Supreme Court had held that this cadre relates only to prosecutors at the District level.

30. The ratio of the judgement of the Hon'ble Supreme Court in **K. Anbazhagan Vs. State of Karnataka**, (2 supra) was that the provisions of Cr.P.C., extracted above, were part of one scheme under which there were two levels of prosecutors, namely the prosecutors appointed at the High Court level, under section 24(1), who would be under the control of the Director of Prosecution and the prosecutors appointed at the district level, who would be under the control of the Deputy Director of Prosecution.

31. It is in that context that the Hon'ble Supreme Court had held that the above provisions of Cr.P.C. would have to be read as a singular scheme. It must be noted that the Hon'ble Supreme Court, while holding

that the aforesaid provisions are to be treated as a singular scheme, had clearly differentiated between prosecutors at the High court level and the district court level. The observations of the Hon'ble Supreme Court cannot be stretched to mean that the Director of Prosecution and the Deputy Director of Prosecution are also public Prosecutors, who fall within the ambit of " the regular cadre of prosecuting officers" mentioned in section 24 (6) of Cr.P.C.

32. An analysis of the relevant provisions of Section 24, would resolve this issue. Section 24 (5) and (6), which are relevant, read as follows:

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

(6) Notwithstanding anything contained in sub-section (5), where in a State there exists a regular Cadre of Prosecuting Officers, the State Government shall appoint a Public Prosecutor or an Additional Public Prosecutor only from among the persons constituting such Cadre:

Provided that where, in the opinion of the State Government, no suitable person is available in such Cadre for such appointment that Government may appoint a person as Public Prosecutor or Additional Public Prosecutor, as the case may be, from the panel of names prepared by the District Magistrate under sub-section (4).

Explanation.—For the purposes of this sub-section,—

(a)

“regular Cadre of Prosecuting Officers” means a Cadre of Prosecuting Officers which includes therein the post of a Public Prosecutor, by whatever name called, and which provides for promotion of Assistant Public Prosecutors, by whatever name called, to that post;

(b)

“Prosecuting Officer” means a person, by whatever name called, appointed to perform the functions of a Public Prosecutor, an Additional Public Prosecutor or an Assistant Public Prosecutor under this Code.

33. Section 24 (5) provides for appointment of Public Prosecutors and Additional Public Prosecutors at the District level, from among the persons who are in the panel prepared by the district magistrate. Section 24 (6), which has a non obstante clause, states that this system of appointment will not be followed if there is a regular cadre of prosecuting officers and only persons from the regular cadre of prosecuting officers can be appointed to these posts. Section 24 (6) is an exception to section 24 (5), which speaks of appointment of Public prosecutors at the district level only. A conspectus of the above leads to the conclusion that the regular cadre of posts of Director or Deputy Director are not a part of the regular cadre of prosecuting officers envisaged under section 24 of Cr.P.C. However, these posts were included in the cadre, by way of the 1992 rules. This inclusion has created the present confusion as to whether they are to be treated as posts which are part of the cadre referred to in Section 24 of

Cr.P.C. The posts of Director and deputy Director of Prosecutions included in the cadre, by way of the 1992 rules, cannot be treated to be part of the cadre of prosecutors envisaged under Section 24 (6). Therefore, the contention that Section 24 (6) restricts the eligibility to the post of Director of Prosecution to the members of the cadre of prosecutors, under this section, cannot be accepted.

34. Even if the above issue were to be held in favour of the petitioner, the language of Section 24 (6) does not lend itself to such an interpretation. The provision reads as follows:

Notwithstanding anything contained in sub-section (5), where in a State there exists a regular Cadre of Prosecuting Officers, the State Government shall appoint a Public Prosecutor or an Additional Public Prosecutor only from among the persons constituting such Cadre:

A plain reading of this provision would be that Public Prosecutors and Additional Public Prosecutors should be appointed from within the cadre of Prosecuting Officers. The term "Public Prosecutor" is defined, in Section 2 (u), as a prosecutor appointed under Section 24. The Director and Deputy Director of Prosecutions are appointed under section 25-A and cannot be treated as public prosecutors or even as members of the regular cadre of prosecuting officers, as provided under section 24(6). It may also be noted that Assistant Prosecutors who are to conduct prosecutions before the magistrate courts, are appointed under Section 25, and not under Section

24. Despite this, they are part of the cadre of prosecuting officers on account of them being included in the cadre of prosecuting officers by way of explanation (b) to section 24 (6). Such a provision is not available for the Director or Deputy Director of Prosecution. The Director of Prosecution, appointed under section 25-A, would not be a public prosecutor.

35. It is also necessary to see whether the 1992 Rules require the post of Director of Prosecution, to be filled up, by promotion, or direct recruitment from only the members of the cadre created under the 1992 Rules.

36. The 1992 Prosecution Rules, as issued originally, read as follows:

2.Constitution:- The service shall consist of the following categories of posts in the Andhra Pradesh State Prosecution service:

Category-1 : Director of Prosecutions

Category-2 :Additional Director of Prosecutions

Category-3 :Public Prosecutor/Joint Director of Prosecutions

Category-4 :Additional Public Prosecutors –Grade-I Deputy Director of prosecutions.

Category-5. :Additional Public prosecutors, Grade-II

Category-6 : Senior Assistant Public Prosecutor.

3.Method of appointment:- Subject to other provisions in these rules, the method of appointment for the several categories shall be as follows:-

Category (1)	Method of Appointment (2)
1. Director of Prosecutions	<p>(a) By promotion from the category of Additional Director of Prosecutions – Category-2 with a service of not less than 2 years.</p> <p>(b) If no suitable candidate is available for promotion in the category of Additional Director by transfer or on deputation from the State Higher Judicial Service.</p> <p>(c) By transfer or on deputation from the I.P.S. Cadre of the Andhra Pradesh an Officer or and above the rank of Deputy Inspector General of Police Possessing a Law Degree.</p>
(2) Additional Director of Prosecutions	By promotion from the category of Public Prosecutor/Joint Director of Prosecutions, Category-3 with a service of not less than 2 years or by transfer or on deputation from Andhra Pradesh State Higher Judicial Service.
(3) Public Prosecutor / Joint Director of Prosecutions	By promotion from the category of Additional Public Prosecutor Grade-1 / Deputy Director of Prosecutions Category-4 with a service of not less than 2 years or by transfer or on deputation from State Judicial Service of the cadre of Sub-Judge.
(4_) Additional Public Prosecutor Grade-I / Deputy Director of Prosecutions	By promotion from the category of Additional Public Prosecutor Grade-II Category-5, with a service of not less than 3 years or by transfer or on deputation from State Judicial Service of the Cadre of Munisif Magistrate.
(5) Additional Public Prosecutor, Grade-II	(i) 70% by promotion from the category-6 – Senior Assistant Public Prosecutor with a service of not less than 2 years;

	(ii) 30% by direct recruitment
(6) Senior Assistant Public Prosecutor	By promotion from the Category-& Assistant Public Prosecutor with a service of not less than 2 years
(7) Assistant Public Prosecutor	By Direct Recruitment

Note:-

- (a) 30% of the substantive vacancies in the category of Additional Public prosecutor, Gr.II (Category-5) shall be filled by direct recruitment.
- (b) The remaining vacancies in the category of Additional Public prosecutor, Grade-II shall be filled by promotion from the category –6. if a suitable or qualified person in the category of senior Assistant public prosecutor is not available, the said vacancies shall also be filled by direct recruitment or by contract.
- (c) The State level recruitment Board in Police Department shall from time to time hold the examination/selection for the candidates for appointment by direct recruitment.

37. Rule 3 was amended for the first time, by way of G.O.Ms.No.24, dated 04.02.2020. The amended Rule 3 reads as follows:

“In Rule 3 of the said Rules, in the table, in column (2), against category (1), for the existing entries, the following entries shall be substituted, namely, –

Category (1)	Method of appointment (2)
	(1) By appointment of an Advocate who has been in practice for not less than then years including a public prosecutor / Additional Public Prosecutor / Assistant Public Prosecutor

	<p>who has put in not less than ten years of service;</p> <p style="text-align: center;">(or)</p> <p>(b) by promotion from the category of additional director of prosecutions – Category-2 with a service of not less than 2</p> <p style="text-align: center;">(or)</p> <p>© by transfer or on deputation from the cadre of District Judges of the Andhra Pradesh State Judicial Service;</p> <p style="text-align: center;">(or)</p> <p>(d) by transfer or on deputation from the I.P.S. Cadre of the Andhra Pradesh, above the rank of Deputy Inspector General of Police, possessing a Law Degree.</p> <p style="text-align: center;">And such appointment shall be made with the concurrence of the Chief Justice of the High Court of Andhra Pradesh.</p>
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38. Thereafter, the Rule was amended again on 15.06.2021 by way of G.O.Ms.No.56. The amendment reads as follows:

In Rule 3 of the said Rules, in the table in column (2) against category(1), for the existing entry , the following entry shall be substituted namely:

“(1) A person shall be eligible to be appointed as Director of Prosecutions only, if he has been in practice as an advocate for not less than ten (10) years and such appointment shall be made with the concurrence of the Chief Justice of the High Court”.

39. Any public prosecutor would have to be an Advocate, failing which he would not be able to prosecute a case in court. Rule 3, originally, provided that the post of Director of Prosecution can be filled by

the Additional Director of Prosecution, a judicial officer in the State Higher Judicial Service, or a member of the A.P. cadre of the Indian Police Service, not below the rank of Inspector General and holding a law degree. While the Additional director of Prosecution would be an advocate, neither of the other two persons would be an advocate. This makes it clear that the State did not consider the post of Director of Prosecutions to be a post which has to be occupied only by an advocate who could act as a public prosecutor. The subsequent amendment, by way of G.O.Ms.No.24, dated 04.02.2020, did not change this position. It is only after the 2nd amendment, by way of G.O.Ms.No.56, dated 15.06.2021, that the post of Director of Prosecution was restricted to Advocates. However, this amendment threw open the post to all Advocates, who have not less than 10 years practice. The rules, even after the 2nd amendment did not restrict the zone of consideration, for the post of Director of Prosecution to prosecutors only. The contention of the petitioner, to the contrary, is rejected.

40. Both the issues have to be held against the Petitioner.

ISSUE NO.5

“Whether, the amendments to the 1992 rules, by way of G.O. No. 24 dated 04.02. 2020 and G.O.No. 56 dated 15.06.2021 are violative of Section 78 of the A.P. Reorganization Act and the principle of Legitimate Expectation?”

41. Sri Ravindranath Reddy would contend as follows:

(A) By virtue of the A.P. State Reorganization Act, 2014, the undivided State of Andhra Pradesh was bifurcated on 01.06.2014. At that time, the Zone of consideration for promotion to the post of Director of Prosecutions was restricted to the in service candidates of the prosecution service only. Rule 3 of the 1992 rules also provided for filling this post with a member of the judicial service or an I.P.S. officer, only if no candidate, within the prosecution cadre was not available. This right is protected by Section 78 of the reorganization Act, which stipulates that the conditions of service, of any person, applicable immediately before the appointed date, which is 01.06.2014, shall not be varied to his disadvantage except with the previous approval of the Central Government. The amendment to the 1992 rules, changing the zone of consideration to all Advocates who have more than ten years of practice, is a variation to the disadvantage of the petitioner and the same has been done without the approval of the Central Government. Consequently, the amendments have to fail. He relies upon the judgements of the Hon'ble Supreme Court, in **T.R. Kapur and Ors., vs. State Of Haryana**¹⁴ and **Akhilesh Prasad vs. Jharkhand Public Services Commission and Ors.**,¹⁵.

(B) The petitioner and other members serving in the cadre created by the 1992 Rules, had ostensibly joined the cadre with the legitimate expectation that they would go up the ladder in accordance with

¹⁴ 1986 (Supp) SCC 584

¹⁵ 2022 SCC ONLINE SC 510

the Rules which were framed at the time of their selection and appointment, and the question of appointing the 4th respondent, who was a rank outsider, violates the principles of legitimate expectation, as the members of the prosecution cadre had joined the service with expectation that only a member of their service could and would hold the post of Director of Prosecution.

42. The learned Advocate General would contend as follows:

(I) The contention of the petitioner that, the un-amended 1992 Prosecution Rules, as on 01.06.2014, restricted the zone of consideration, for promotion, to the in service candidates, is protected by Section 78 of the Reorganization Act is incorrect. Firstly, the un-amended Rules did not restrict the zone of consideration to only in service candidates. Rule 3 permitted appointment of a Judicial Officer or an I.P.S Officer. Section 78 of the Re-organization Act would only protect the existing rights by stipulating that any derogation of such rights would require the prior consent of the Central Government. It is settled law that no person has an absolute right of promotion. However, the only right available to an in service candidate is to be within the zone of consideration. Any amendment affecting the chances of promotion would not fall foul of Section 78 of the Re-Organization Act.

(II) The contention of the petitioner that there is a case of legitimate expectation that only members serving in the cadre would be

appointed as Director of Prosecution is belied by a reading of the un-amended Rule 3 of the 1992 prosecution Rule. This rule stipulated that the post of Director of Prosecution can be filled up by promotion of a member of the cadre under the 1992 rules, a District Judge rank Judicial Officer, where there is no suitable person available in the post of additional Director of Prosecution or by transfer or deputation of an I.P.S Officer not below the rank of Deputy General of Police provided the said officer has obtained a law degree. He would submit that these alternative methods of filling up the posts of Director of Prosecution clearly did not restrict the said post to be filled up only by way of promotion from the cadre created under the 1992 Rules.

III) Rule 3(1)(a) of 1992 Rules, prior to 01.06.2014 provided a promotion avenue from the cadre of Additional Director of Prosecution to the post of Director of Prosecution and the same being repugnant to Section 25-A Cr.P.C., would have to be treated as inoperative from the date of insertion of Section 25-A Cr.P.C., and consequently violation of Section 78 of the Reorganization Act does not arise as the provisions of Rule 3(1)(a) of 1992 Rules stand obliterated on account of insertion of Section 25-A Cr.P.C.

CONSIDERATION OF THE COURT:

43. The contention of the petitioner is that the amendments to the 1992 rules has affected the members of the prosecution cadre in two ways, resulting in a violation of the provision of section 78 of the A.P. Reorganization Act. Firstly, the right of the members of the prosecution cadre for being considered for the post of Director has been taken away and secondly, the post of Director of Prosecution was reserved exclusively to the members of the prosecution cadre and the same has now been thrown open to persons who are not members of the prosecution cadre.

44. Section 78 of the Andhra Pradesh Reorganization Act reads as follows:

78 Other provisions relating to services:-

(1) Nothing in this section or in section 77 shall be deemed to affect, on or after the appointed day, the operation of the provisions of Chapter I of Part XIV of the Constitution in relation to determination of the conditions of service of persons serving in connection with the affairs of the Union or any State:

Provided that the conditions of service applicable immediately before the appointed day in the case of any person deemed to have been allocated to the State of Andhra Pradesh or to the State of Telangana under section 77 shall not be varied to his disadvantage except with the previous approval of the Central Government.

(2) All services prior to the appointed day rendered by a person,—

(a) if he is deemed to have been allocated to any State under section 77, shall be deemed to have been rendered in connection with the affairs of that State;

(b) if he is deemed to have been allocated to the Union in connection with the administration of the successor State of Telangana, shall be deemed to have been rendered in connection with the affairs of the Union, for the purposes of the rules regulating his conditions of service.

(3) The provisions of section 77 shall not apply in relation to members of any All-India Service.

45. The scope of a provision analogous to Section 78 of the Andhra Pradesh Reorganization Act had been considered by the Hon'ble Supreme Court in the case of **T.R. Kapur and Ors., vs. State Of Haryana** (14 supra). In this case, the service rules, which were in effect at the time of bifurcation of the states of Punjab and Haryana, had provided for promotion of Assistant engineers, with engineering diplomas, to the post of Executive Engineer. This rule was amended making a degree in engineering as an essential qualification for such promotion. Some assistant engineers, who were only diploma holders, had challenged the amendment on the ground that it was violative of section 82 (6) of the Punjab Reorganization Act, which is set out hereunder:

"82. (6) Nothing in this section shall be deemed to affect on or after the appointed day the operation of the provisions of Chapter I of Part XIV of the Constitution in relation to the determination of the conditions of service of persons serving in connection with the affairs of the Union or any State:

Provided that the conditions of service applicable immediately before the appointed day to the case of any person referred to in sub-section (1) or sub-section (2) shall not be varied to his disadvantage except with the previous approval of the Central Government."

46. The Hon'ble Supreme Court, while interpreting this provision held that :-

8. There is a long line of decisions starting from *Mohammed Bhakar v. Y. Krishan Reddy* [1970 SLR 768 (SC)] down to *Mohammad Shujat Ali v. Union of India* [(1975) 3 SCC 76 : 1974 SCC (L&S) 454 : (1975) 1 SCR 449] while construing the analogous provision contained in the proviso to Section 115(7) of the States Reorganisation Act, 1956 laying down that any rule made under the proviso to Article 309 of the Constitution which seeks to vary or alter the conditions of service without the previous approval of the Central Government would be void and inoperative being in violation of the proviso to sub-section (7) of Section 115 of the Act. It is a trite proposition that any rule which affects the right of a person to be considered for promotion is a condition of service, although mere chances of promotion may not be. As laid down by this Court in *A.S. Parmar case* [1984 SCC Supp 1 : 1984 SCC (L&S) 295 : AIR 1984 SC 643 : (1984) 2 SCR 476] the petitioners like other members of Class II service who are diploma holders and satisfy the eligibility test of eight years' service in that class, were eligible for being considered for promotion to the post of Executive Engineer in Class I service without having a degree in Engineering. Admittedly, the impugned notification which seeks to amend Rule 6(b) with retrospective effect from July 10, 1964

clearly operates to their disadvantage as its purports to make them ineligible for promotion being diploma holders.

9. In *Mohammed Bhakar case* [1970 SLR 768 (SC)] the court speaking through Mitter, J. said: "A rule which affects the promotion of a person relates to his conditions of service." It was held that a rule which made the passing of certain departmental examinations a prerequisite for promotion having been made without the previous approval of the Central Government was void by reason of sub-section (7) of Section 115. In *Mohammad Shujat Ali case* [(1975) 3 SCC 76 : 1974 SCC (L&S) 454 : (1975) 1 SCR 449] a Constitution Bench of this Court speaking through Bhagwati, J. (as he then was) observed: (SCC p. 95, para 15)

"[A] rule which confers a right of actual promotion or a right to be considered for promotion is a rule prescribing a condition of service.

Under the Class I Rules as they existed immediately prior to the appointed day i.e. before November 1, 1966, a member of the Overseers Engineering Service in the Irrigation Branch, Punjab having a diploma was eligible for being promoted as Sub-Divisional Officer in the Class II service and then in due course to the post of Executive Engineer in the Class I service within the quota prescribed for them without having a degree in Engineering. It was not necessary to possess a degree in Engineering as held by this Court in *A.S. Parmar case* [1984 SCC Supp 1 : 1984 SCC (L&S) 295 : AIR 1984 SC 643 : (1984) 2 SCR 476] for purposes of promotion under the unamended Rule 6(b) of the Class I Rules, as in the case of promotion to the post of Executive Engineer in Class I service under Rule 6(b) what was essential was eight years' service in that class and not a degree in Engineering. The impugned notification which purports to amend Rule 6(b) with retrospective effect, however, renders

members of the Class II service like the petitioners who are diploma holders ineligible for promotion by making a degree in Engineering an essential qualification for such promotion which amounts to alteration of the conditions of service applicable to them to their disadvantage without the previous approval of the Central Government and is thus void by reason of the proviso to sub-section (6) of Section 82 of the Punjab Reorganisation Act, 1966.

46. In **Akhilesh Prasad vs. Jharkhand Public Services Commission And Ors.**, (15 supra) the petitioner was appointed in the Cooperative department of Bihar, on the basis of his status as a member of the Schedule tribe known as "Gonds". After bifurcation of the state of Bihar into the states of Bihar and Jharkhand, he was allocated to the State of Jharkhand. However, he was not given the benefit of reservation, available to him earlier, in the State of Bihar, when he appeared for a limited recruitment examination. The Hon'ble Supreme Court, while considering the protection offered, under the *in pari materia* provisions of the Bihar Reorganization Act, 2000, had held:

20. As has been clarified in the decision in *Pankaj Kumar*², such of the employees who opt for service under a successor State after reorganization, their existing service conditions would not be varied to their disadvantage and would stand protected by virtue of Section 73 of the Act. Further, subject to the condition that such person would not be entitled to claim the benefit of reservation simultaneously in both the successor States, such employees would be entitled to claim not only the benefit of reservation in the service of the successor State to which they

had opted and were allocated, but they would also be entitled to participate in any subsequent open competition with the benefit of reservation.””

47. The two judgments of the Hon'ble Supreme court, relied upon by the Petitioner, are to the effect that the provisions, such as section 78 of the A.P. Reorganization Act, protect the service conditions of employees and that the right to be considered, for promotion, is a service condition. In both cases employees, who were eligible to be promoted, lost that eligibility, on account of a change in the service conditions due to which the change in the service conditions were held to be violative of the provisions, which are in *pari materia*, with section 78 of the A.P. Reorganization Act. The question before this court is whether the petitioner or any other member of the prosecution cadre become ineligible to be considered for the post of Director of Prosecution.

48. In the present case, the 1992 rules, as enacted in 1992, provided for three streams of candidates for filling up the post of Director of Prosecution. These were the Additional Director of Prosecution, a judicial officer, if there were no eligible Additional Directors of Prosecution and I.P.S. Officers. This position was continued till 04.02.2020, when Rule 3 was amended and an additional class of Advocates in practice was added. Subsequently, the post of Director of Prosecution was thrown open to all advocates who had a practice of not less than 10 years. Any member of the prosecution cadre with a service of 10 years would also be an advocate

with 10 years of practice, on account of the provisions of section 24 (9) of Cr.P.C. and would continue to be eligible for being appointed as the Director of Prosecution. Prior to 01.06.2014, the members of the prosecution cadre, created under the 1992 rules, were eligible to be considered for being appointed, by way promotion, to the post of Director of Prosecution. The subsequent amendments have not denuded the right of a member of the prosecution cadre for being considered for the post of Director of Prosecution nor made such members ineligible for consideration. The first contention of the petitioner, in this regard has to be rejected.

49. The contention of the petitioner that there is a case of legitimate expectation that only members serving in the cadre would be appointed as Director of Prosecution is belied by a reading of the un-amended Rule 3 of the 1992 rules. This rule stipulated that the post of Director of Prosecution can be filled up by promotion of a member of the cadre under the 1992 rules, a District Judge rank Judicial Officer, where there is no suitable person available in the post of additional Director of Prosecution or by transfer or deputation of I.P.S Officer not below the rank of Deputy General of Police provided the said officer has obtained a law degree. The contention of the petitioner that the post was to be filled up, in the alternative by members of the judicial service or a member of the Indian Police Service, only in the absence of a qualified member of the prosecution cadre is not borne out in rule 3. Clause (a) in the entry relating

to the post of Director of Prosecution states that the post can be filled up by promotion from the prosecution cadre. Clause (b) says that in the event of no suitable member of the prosecution being available, a member of the district judiciary can be appointed. Clause (c) says that a member of the Indian Police Service, holding a law degree can be appointed by transfer or deputation. It is only in the case of a member of the district judiciary that the appointment will be made when no suitable candidate is available in the prosecution cadre. This condition is not applicable to I.P.S. officers. These alternative methods of filling up the posts of Director of Prosecution clearly did not restrict the said post to be filled up only by way of promotion from the cadre created under the 1992 Rules. This issue is held against the petitioner.

50. In the light of the above view taken by this court, the question of repugnancy does not require to be considered.

ISSUE 6:

6. Whether the post of Director of Prosecution can be filled only in accordance with the 1992 Rules read with the provisions of The Andhra Pradesh (Regulation of Appointments to Public Services And rationalization of Staff Pattern and Pay Structure) Act, 1994 (hereinafter referred to as the 1994 Act)?

51. Sri Ravindranath Reddy, would also contend that according to the amended rule 3, as it stands today, the Director of Prosecution is to be appointed directly. Note C to Rule 3 of the 1992 rules requires all direct recruitment to be done only by the Police Recruitment Board. The appointment of the Director of Prosecution would also have to be done in the same manner and this issue was raised by the 2nd Respondent and the same has not been answered by the 1st respondent.

52. Before going into this question, certain submissions made by the petitioner, in the written arguments would have to be noticed. The petitioner, while answering the contention of the respondents, that Section 25 A of Cr.P.C. requires appointment and not promotion, had contended that the expression "appointed" used in section 25A does not exclude promotion and cited the judgements in **State Of Rajasthan vs. Anand Prakash**¹⁶ and **Union Public Service Commission vs. Girish Jayanti Lal Vaghela & Ors.**,¹⁷. In such a situation, the question of whether the petitioner can contend that the post of Director of Prosecution can be filled up only by direct recruitment would arise.

53. The note appended to Rule 3 of the 1992 rules reads as follows:

¹⁶ (2003) 7 SCC 403

¹⁷ (2006) 2 SCC 482

Note:-

- (a) 30% of the substantive vacancies in the category of Additional Public prosecutor, Gr.II (Category-5) shall be filled by direct recruitment.
- (b) The remaining vacancies in the category of Additional Public prosecutor, Grade-II shall be filled by promotion from the category –6. if a suitable or qualified person in the category of senior Assistant public prosecutor is not available, the said vacancies shall also be filled by direct recruitment or by contract.
- (c) The State level recruitment Board in Police Department shall from time to time hold the examination/selection for the candidates for appointment by direct recruitment.

54. This note, at (a) and (b), speaks of direct recruitment to the posts at category 5 and 6. There is no mention of direct recruitment to the post of Director of Prosecution. However, note (c) requires all direct recruitment to be made by the State level recruitment Board in the police department. This note (c) would have to be read in conjunction with note (a) and (b) which would indicate that the recruitment to Category 5 and 6 posts would be done by the State level recruitment Board in the police department and this note would not be applicable to the appointment to the post of Director of Prosecution.

55. Even if the said note is to be understood that all direct appointments, including the post of Director of Prosecutions, are to be made by the State level recruitment Board in the police department, the same would fall foul of the provisions of Section 25A of Cr. P.C. Under

Section 25A, the concurrence of the Hon'ble Chief justice is required for any appointment of a Director of Prosecution. If the contention of the petitioner is to be accepted, the process of appointment of a Director of Prosecution would require the State level recruitment board to conduct a selection process, by way of a test or examination to decide the merit of the candidates who apply for the post and then send the name of the selected candidate to the Hon'ble Chief Justice for concurrence. This process would reduce the concurrence of the Hon'ble Chief Justice to a mere formality and the role of the Hon'ble Chief Justice to that of a post office. It is the case of the Petitioner himself that the concurrence of the Hon'ble Chief Justice is not a mere formality and requires application of mind by the Hon'ble Chief Justice. In such a situation, the note to rule 3 of the 1992 rules would have to give way to the provisions of Section 25A of Cr.P.C. and the selection process for the Director of Prosecution cannot be entrusted to the State level recruitment Board in the police department.

56. The petitioner contended that the appointment of the 4th respondent is contrary to section 4 of the 1994 Act. Section 4 (1), relied upon by the petitioner, reads as follows:

4. Regulation of recruitment. - [(1)] No recruitment in any public service to any post in any class, category or grade shall be made except, -

(a) from the panel of candidates selected and recommended for appointment by the Public Service Commission/College Service

Commission where the post is within the purview of the said Commission;

(b) from a panel prepared by any Selection Committee constituted for the purpose in accordance with the relevant rules or orders issued in that behalf; and

[(c) from the candidates having the requisite qualification either sponsored by the Employment Exchange or applied in response to the wide publicity of vacancy position through Daily News Paper having wider circulation or Employment News Bulletin and also display on the Office Notice Boards or announcement through Radio or Television in other cases where recruitment otherwise than in accordance with clauses (a) and (b) is permissible.]

[(d) to any suitable appointments to be made in compliance with assurance bearing number 2488/X/96, Assembly Secretariat dated 10th September, 1996 made on the floor of the Legislative Assembly of the State.]

The Act requires selection to be done only by the bodies mentioned in Section 4 of 1994 Act, to the exclusion of all other bodies. This would exclude the requirement of the concurrence of the Hon'ble Chief justice. Even if such concurrence is included, the said concurrence would be a mere formality which has no meaning. There is a clear repugnance between Section 4 of the 1994 Act and the provisions of section 25 A of Cr.P.C. requiring a decision as to which provision would prevail. Section 25A of Cr.P.C., is part of a central enactment made under the legislative field of criminal law, set out in entry 1 of the concurrent list of the VIIth Schedule to the Constitution. Article 254 of the Constitution stipulates that in the

event of any repugnancy between a legislation enacted by Parliament, in relation to a legislative field in the concurrent list, and a law made by a state, the law enacted by Parliament would prevail. Consequently, the question of violation of the 1994 Act does not arise.

ISSUE NO. 7:

7. What is the scope of Judicial review regarding the Concurrence given by the 2nd respondent?

57. Sri Ravindranath Reddy contends that the process of concurrence mentioned in Section 25-A Cr.P.C., would require the 1st respondent to place all relevant material relating to each of the candidates, proposed by the 1st respondent in order to allow the 2nd respondent to exercise his discretion after the full facts have been placed before him. In the present case, except forwarding of bio-data containing scant details, the 1st respondent did not place any material before the 2nd respondent to understand the qualifications and suitability of the 4th respondent to be appointed as Director of Prosecutions.

58. It is further contended that the entire correspondence between the 1st and 2nd respondents from 05.11.2019 to 01.11.2021 was only with respect to the Rules and procedure for appointment of Director of Prosecutions and did not deal with the credentials, character, capability and competence of the 4th respondent in comparison to the other candidates. It

is contended that in the absence of this information, the concurrence of the 2nd respondent is defective.

59. The petitioner relies upon the judgment in **N. Kannadasan Vs. Ajoy Khose and Ors.**,¹⁸; **Jawahar Lal vs. Tate of H.P.**¹⁹ **Kishan Kumar Pathak vs. State of U.P., and 4 Ors. B** (10 supra).

60. The learned Advocate general submits that the concurrence required under Section 25A of Cr.P.C was fulfilled by placing the applications of the 4th respondent as well as the other applicants and also by providing the bio-data of the 4th respondent and other applications. He would further submit that the question of whether a person with political affiliations can be brought in as a Director of Prosecution had also been raised before the 2nd respondent, by way of a compliant from an advocate, and as such concurrence given by the Hon'ble Chief Justice is clearly after necessary consideration had been given to the said issue.

61. Sri Vivek Chandra Sekhar, learned counsel appearing for the 2nd respondent would submit that there are no allegations against the 2nd respondent, except in paragraphs 42, 51, 57, 58 and 66. He would submit that the pleadings in these paragraphs also do not in any manner assail the conduct of the 2nd respondent. While contending that there has been a violation of the process, the petitioner has not chosen to set out what the process was. He would further submit that in any event the Hon'ble

¹⁸ (2009) 7 SCC page 1

¹⁹ (2010) SCC Online HP 3695 (D.B)

Supreme Court in the case of **Mahesh Chandra Gupta vs. Union of India**, (9 Supra) while considering the scope of judicial review in such matters, had held that contents of consultation are not open to judicial review. He would submit that the Hon'ble Chief Justice would give concurrence if it is found that the candidate is suitable and is not disqualified in any manner. He would also rely upon the judgment of the Hon'ble Supreme Court in **Union of India and Ors vs. Kali Dass Batish & another**²⁰, wherein, the Hon'ble Supreme Court, at paragraph No.14, of the said Judgment had considered the difference between "concurrence" as opposed to "consultation" and had held that concurrence would require an independent view of the matter and nothing has been placed before this Court to show that such an independent view has not been taken.

62. Sri C. V. Mohan Reddy, learned senior counsel appearing for Sri V.R. Reddy, learned Counsel appearing for the 4th respondent, relied on the decision of the Hon'ble Supreme Court in **Mahesh Chandra Gupta vs. Union of India**, (9 supra) as well as the Judgment in **State of Madhya Pradesh vs. Ramashankar Raghuvanshi & another** (7 supra) and **Union of India & ors vs. Kali Dass Batish & another** (20 supra) to contend that the scope of judicial review, in this case, would not extend to going into the merits of the concurrence.

²⁰ (2006) 1 SCC 779

CONSIDERATION OF THE COURT:

63. The Hon'ble Supreme Court in **Mahesh Chandra Gupta vs. Union of India**, (9 supra) while considering the challenge to the appointment of an Additional Judge of the Allahabad High Court had gone into the question of the scope of judicial review available in such cases. Paragraphs 43 & 44, extracted below, are relevant:-

43. One more aspect needs to be highlighted. "Eligibility" is an objective factor. Who could be elevated is specifically answered by Article 217(2). When "eligibility" is put in question, it could fall within the scope of judicial review. However, the question as to who should be elevated, which essentially involves the aspect of "suitability", stands excluded from the purview of judicial review.

44. At this stage, we may highlight the fact that there is a vital difference between judicial review and merit review. Consultation, as stated above, forms part of the procedure to test the fitness of a person to be appointed a High Court Judge under Article 217(1). Once there is consultation, the content of that consultation is beyond the scope of judicial review, though lack of effective consultation could fall within the scope of judicial review. This is the basic ratio of the judgment of the Constitutional Bench of this Court in *Supreme Court Advocates-on-Record Assn.* [(1993) 4 SCC 441] and *Special Reference No. 1 of 1998, Re* [(1998) 7 SCC 739] .

64. The Hon'ble Supreme Court, while considering the challenge to the appointment to the post of judicial member in the Central Administrative Tribunal, had again gone into the question of judicial review

relating to the concurrence given by the Hon'ble Chief Justice of India in **Union of India and Ors., vs. Kali Dass Batish & Anr.**, (20 supra) had held as follows:

14. Unfortunately, the High Court seems to have proceeded on the footing that the appointment was being made on its own by the Central Government and that there was an irregular procedure followed by the Secretary by giving undue importance to the IB report. It was most irregular on the part of the High Court to have sat in appeal over the issues raised in the IB report and attempted to disprove it by taking affidavits and the oral statement of the Advocate General at the Bar. We strongly disapprove of such action on the part of the High Court, particularly when it was pointed out to the High Court that along with the proposals made by the Government, the Minister of State had specifically directed for submission of the IB report to the Chief Justice of India for seeking his concurrence, and that this was done. We note with regret that the High Court virtually sat in appeal, not only over the decision taken by the Government of India, but also over the decision taken by the Chief Justice of India, which it discarded by a side wind. In our view, the High Court seriously erred in doing so. Even assuming that the Secretary of the department concerned of the Government of India had not apprised himself of all necessary facts, one cannot assume or impute to a high constitutional authority, like the Chief Justice of India, such procedural or substantive error. The argument made at the Bar that the Chief Justice of India might not have been supplied with the necessary inputs has no merit. If Parliament has reposed faith in the Chief Justice of India as the paterfamilias of the judicial hierarchy in this country, it is not open for anyone to contend that the Chief Justice of India might have given his concurrence

without application of mind or without calling for the necessary inputs. The argument, to say the least, deserves summary dismissal.

17. In *K. Ashok Reddy v. Govt. of India* [(1994) 2 SCC 303] this Court indicated that however wide the power of judicial review under Article 226 or 32 there is a recognised limit, albeit self-recognised, to the exercise of such power. This Court reiterated a passage from *Craig's Administrative Law* (2nd Edn., p. 291), vide SCC p. 315, para 21, as under:

"The traditional position was that the courts would control the existence and extent of prerogative power, but not the manner of exercise thereof. ... The traditional position has however now been modified by the decision in *GCHQ case* [*Council of Civil Service Unions v. Minister for the Civil Service*, 1985 AC 374 : (1984) 3 All ER 935 : (1984) 3 WLR 1174 (HL)] . Their Lordships emphasised that the reviewability of discretionary power should be dependent upon the subject-matter thereof, and not whether its source was statute or the prerogative. Certain exercises of prerogative power would, because of their subject-matter, be less justiciable, with Lord Roskill compiling the broadest list of such forbidden territory...."

The observations of Lord Roskill, referred to above, are from *Council of Civil Service Unions v. Minister for the Civil Service* [*Council of Civil Service Unions v. Minister for the Civil Service*, 1985 AC 374 : (1984) 3 All ER 935 : (1984) 3 WLR 1174 (HL)] (*GCHQ case*) as under : (All ER p. 956*d-e*)

"But I do not think that that right of challenge can be unqualified. It must, I think, depend on the subject-matter of the prerogative power which is exercised. Many examples were given during the argument of prerogative powers which as at present advised I do not think could properly be made the subject of judicial review. Prerogative powers such as those

relating to the making of treaties, the defence of the realm, the prerogative of mercy, the grant of honours, the dissolution of Parliament and the appointment of ministers as well as others are not, I think, susceptible to judicial review because their nature and subject-matter is such as not to be amenable to the judicial process.”

18. Finally, this Court emphasised judicial restraint by citing with approval a passage in *de Smith's Judicial Review of Administrative Action* (vide SCC p. 316, para 23) as under:

“Judicial self-restraint was still more marked in cases where attempts were made to impugn the exercise of discretionary powers by alleging abuse of the discretion itself rather than alleging non-existence of the state of affairs on which the validity of its exercise was predicated. Quite properly, the courts were slow to read implied limitations into grants of wide discretionary powers which might have to be exercised on the basis of broad considerations of national policy.”

Based on this reasoning, it was acknowledged that the transfer of a Judge of the High Court based on the recommendation of the Chief Justice of India would be immune from judicial review as there is “an inbuilt check against arbitrariness and bias indicating absence of need for judicial review on those grounds. This is how the area of justiciability is reduced.... [*Ibid.*, para 24]”

19. We, respectfully, reiterate these observations, and expect them to be kept in mind by all courts in this country invested with the power of judicial review.

65. The petitioner contends that the Hon'ble Supreme Court in **Mahesh Chandra Gupta vs. Union of India**, (9 supra) had also

observed in Paragraph No.44 that lack of effective consultation, deliberation process is a ground for judicial review.

66. In the light of the above judgments, the scope of judicial review in the process of concurrence would be restricted to the question of whether there was effective consultation or not. The counter affidavits filed on behalf of the 2nd respondent would show that there had been correspondence between the 2nd respondent and the 1st respondent, in which the 2nd respondent had sought clarification on various aspects and such clarifications had been given. The counter affidavit on behalf of the 2nd respondent also states that the question of whether the persons with political affiliations can be selected for the purpose of Director of Prosecution was also considered by the 2nd respondent before the concurrence had been accorded. As the question of eligibility has been considered, the question of whether suitability has been considered properly or not is not within the purview of judicial review and this court refrains from going into this question.

ISSUE Nos.8, 9 & 10:

8. Whether, the Non consideration of the petitioner for the post of Director of Prosecution is violative of the interim directions of this Court, dated 15.08.2021 in W.P.No.15377 of 2021 and has to be set aside ?

9. Whether, the process of selection, of the 4th respondent as the Director of Prosecution, could be done without framing the necessary guidelines/rules governing the method of selection and the service conditions of the post of Director of Prosecution, including the period of service and the disciplinary proceedings that could be taken up against errant Directors of Prosecution ?
10. Whether the action of the 1st respondent, in appointing the 4th respondent is tainted by legal malice?

67. Sri Ravindranath Reddy submits that while Section 25-A Cr.P.C., prescribes only the qualification / eligibility for appointment as Director of Prosecutions, there is no method or procedure set out under this provision of law. Consequently, the un-amended Rule 3 of the 1992 Rules, which provides for the procedure / method of appointment, that is by promotion, would have to be applied to the present case and consequently, the appointment of the 4th respondent as Director of Prosecutions would have to be set aside and the petitioner, who is the Additional Director of Prosecutions, would have to be appointed as the Director of Prosecutions.

68. The subsequent suppression of the application of the petitioner, by the 1st respondent, without sending the same to the 2nd respondent, is clearly violative of the Directions of this Court dated 15.08.2021 in W.P.No.15377 of 2021. Further, the High Court was a party to W.P. No. 15377 of 2021 and the Hon'ble Chief Justice of the High Court

is deemed to have notice, of the order of 15.08.2021, and consequently the entire process would have to be set aside.

69. As there is no procedure / method for appointment to the post of Director of Prosecutions, a procedure would have to be evolved in compliance with Article 14 of the Constitution of India on the basis of various principles laid down by the Hon'ble Supreme Court of India, as well as the High Courts of the country. Unless and until such procedure is set out, there can be no recruitment / appointment to the post of Director of Prosecutions. The petitioner relied upon **Renu vs. District Sessions Judge²¹**; **State of U.P. vs. State of U.P. Law Officers Association²²**; **State of Punjab vs. Brijeshwar Singh²³**; and **Union Public Service Commission vs. Girish Jayanti Lal Vaghel** (17 supra),

70. The learned Advocate General, in reply to the submissions of Sri M. Ravindranath Reddy would submit as follows:

Section 25A of Cr.P.C not only prescribes the qualification and eligibility for appointment of Director of Prosecution but a method of such appointment can be ascertained from the fact that the concurrence of the Hon'ble Chief Justice of the High Court is required. As such concurrence would be given, only upon due consideration of the candidates proposed by the State, a clear method or procedure is set out.

²¹ (2014) 14 SCC 50

²² (1994) 2 SCC 204

²³ (2016) 6 SCC 1

CONSIDERATION OF THE COURT:

71. In view of the observations of this Court, set out above, it must be held that the method of direct recruitment by the state level selection board, set out in the 1992 Rules would not apply to the appointment of the Director of Prosecution. The only provision available, in relation to the appointment of Director of Prosecution, is Section 25-A of Cr.P.C. This provision only provides the qualification/eligibility for appointment to the post of Director of Prosecution. However, the method of appointment, the term of appointment, the question whether the post is a permanent post of the cadre wherein the Director of Prosecution would retire along with the other State employees upon attaining the age of superannuation or whether the post is a tenure post is not available or discernible from the provisions of Section 25-A of Cr.P.C. These issues had also been raised by the 2nd respondent in the course of the correspondence between the 1st and 2nd respondents. In reply to these queries, the 1st respondent had stated that all these issues would be sorted out at the time of appointment of the Director of Prosecution. However, the record reveals that none of these issues have been resolved at the time of appointing the 4th respondent as Director of Prosecution.

72. The learned Advocate General had submitted that the post of Director of Prosecution is now a tenure post. However, the period of tenure has not been indicated nor has any proceeding, fixing such tenure, been

placed before this court. The 2nd respondent, in the course of the correspondence with the 1st respondent, had enquired as to which authority, would exercise disciplinary powers over an errant Director of Prosecution. The 1st respondent had replied that this issue would be resolved at the time of the appointment of the Director of Prosecution. However, this issue has not been resolved till date. In the absence of these issues being resolved, no Director of Prosecution could have been appointed.

73. It is well settled law, as can be seen from the judgments of the Hon'ble Supreme Court in **Renu vs. District Sessions Judge**²⁴; **State of U.P. vs. State of U.P. Law Officers Association**²⁵; **State of Punjab vs. Brijeshwar Singh**²⁶; and **Union Public Service Commission vs. Girish Jayanti Lal Vaghel** (17 supra), that the State, while filling any public post, has to follow a reasonable and fair procedure, which is transparent, and with due notice to all persons, who would fall within the zone of consideration for such appointment. In the present case, no discernible procedure has been formulated.

74. The Hon'ble Supreme Court in **State of Punjab And Another Vs. Brijeshwar Singh Chahal And Another (2016) 6 SCC 1**,

²⁴ (2014) 14 SCC 50

²⁵ (1994) 2 SCC 204

²⁶ (2016) 6 SCC 1

while considering the question of appointment of government pleaders and other law officers, in the high court, held as follows:

33. In *State of U.P. v. U.P. State Law Officers' Assn.* [*State of U.P. v. U.P. State Law Officers' Assn.*, (1994) 2 SCC 204 : 1994 SCC (L&S) 650 : (1994) 26 ATC 906] also Law Officers were removed by the State Government, aggrieved whereof, the affected officers approached the High Court contending, inter alia, that their removal was against the principles of natural justice and that they could be removed from their offices only for valid reasons. The High Court agreed [*R.P. Singh v. State of U.P.*, 1990 SCC OnLine All 689 : 1990 All LJ 971] with that contention, allowed the petition and quashed the orders of removal. The State assailed that order before this Court in which this Court examined the issue from three different dimensions viz. (i) *the nature of the legal profession*; (ii) *the interest of public*; and (iii) *the modes of appointment and removal*.

34.

35. On the question of *public interest involved in the appointment of lawyers*, this Court in *U.P. State Law Officers' Assn. case* [*State of U.P. v. U.P. State Law Officers' Assn.*, (1994) 2 SCC 204 : 1994 SCC (L&S) 650 : (1994) 26 ATC 906] unequivocally declared that the Government or the public body represents public interest and whoever is in charge of running their affairs is no more than a trustee or a custodian of public interest. Protection of public interests in the best possible manner is their primary duty. It follows that public bodies are under an obligation to the society to take the best possible steps to safeguard such interests. That obligation in turn casts on them the duty to engage the most competent servants, agents, advisers, etc. Even in the matter of selection of lawyers, those who are running the Government or the public bodies are under an obligation to make earnest efforts to select the best from the available lot. This is more so because the claims made by and/or against the public bodies are monetarily substantial and socially crucial with far-reaching consequences.

36. This Court while dealing with the third dimension touching the mode of *appointment of lawyers* declared that in conformity with the obligation cast upon them those handling the affairs of the State are duty-bound to select the most meritorious, whatever the method adopted for such selection and appointment may be. It must be shown that a search for the meritorious was undertaken and that appointments were made only on the basis of the merit and not for any other consideration. The following passage is in this regard apposite : (*U.P. State Law Officers' case [State of U.P. v. U.P. State Law Officers' Assn., (1994) 2 SCC 204 : 1994 SCC (L&S) 650 : (1994) 26 ATC 906] , SCC p. 217, para 18*)

“18. The mode of appointment of lawyers for the public bodies, therefore, has to be in conformity with the obligation cast on them to select the most meritorious. An open invitation to the lawyers to compete for the posts is by far the best mode of such selection. But sometimes the best may not compete or a competent candidate may not be available from among the competitors. In such circumstances, the public bodies may resort to other methods such as inviting and appointing the best available, although he may not have applied for the post. Whatever the method adopted, it must be shown that the search for the meritorious was undertaken and the appointments were made only on the basis of the merit and not for any other consideration.”

(emphasis supplied)

75. It is not necessary that the process of appointment requires an examination to be conducted to determine relevant merit or demerit of the candidates to decide upon the best candidate available for the post of Director of Prosecution. The State would be required to put in place a reasonable procedure which is fair and transparent. It must also be remembered that the requirement of concurrence of the Hon'ble Chief Justice for any such appointment would mean that such appointment need

not follow the normal process of conducting some kind of written or oral examination.

76. The petitioner has also contended that a Division Bench of this Court, by its interim order dated 05.08.2021, had held that even the petitioner would be entitled to be considered for the purpose of Director of Prosecution and had given the opportunity to the petitioner to make necessary applications for such purpose. The petitioner raised a two fold contention that this order required the 1st respondent to process the application of the petitioner also and secondly, the said order was within the knowledge of the 2nd respondent, as the 2nd respondent was also a party to the order dated 04.08.2021.

77. As far as the second contention of the petitioner is concerned, no material has been placed before this Court to show that a copy of the order dated 04.08.2021 is served on the 2nd respondent. In the absence of such service, the contention that the 2nd respondent is aware of the orders of the Division Bench of this Court dated 04.08.2021 cannot be accepted.

78. However, there is no dispute that the petitioner had filed an application for being considered for the post of Director of Prosecution. It is also not disputed that the order of the Division Bench had been passed on a concession by the Government Pleader appearing for the State and as such the 1st respondent cannot claim ignorance of the order of this Court or filing of the application by the 2nd respondent. Non-consideration of the

application of the petitioner, in view of the orders of this Court, dated 04.08.2021, vitiates the entire process of selection and the same has to be set aside.

79. In the light of the above finding, the issue of legal malice does not require further consideration.

80. In the circumstances, this writ petition is partly allowed and disposed of, with the following directions:

A. **G.O.Rt.No.552 Home (Courts-A) Department, dated 22.05.2023** is set aside and the appointment of the 4th respondent as Director of Prosecution, is set aside.

B. The writ petition to the extent of the remaining reliefs is dismissed

C. The 1st respondent shall finalise the method of appointment of the Director of Prosecutions, in line with the observations of this Court, that the said process shall be indicative of the fact that the search for the meritorious was undertaken and the appointments were made only on the basis of merit and not for any other consideration.

D. The 1st respondent shall also finalise the terms of appointment of the Director of Prosecution including tenure, the disciplinary authority for the Director of Prosecution, the conditions of removal or suspension, etc.

E. The 1st respondent shall appoint a new Director of Prosecution, after following the process of selection finalized by the 1st Respondent and after obtaining the concurrence of the Hon'ble Chief Justice.

F. The above steps to be completed within 4 months from today.

G. The 1st respondent may, till the appointment of a Director Prosecutions, make interim arrangements in regard to the post of Director of Prosecutions, by continuing the 4th respondent, as the interim Director of Prosecutions.

H. In the event of the 1st respondent not completing the aforesaid process within 4 months from today, the 4th respondent shall not continue as the interim Director of Prosecutions and appropriate alternative arrangements would have to be made by the 1st respondent.

There shall be no order as to costs.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

RAVINATH TILHARI, J

R. RAGHUNANDAN RAO, J

21st February, 2024
JS/RJS.

HON'BLE SRI JUSTICE RAVINATH TILHARI
&
HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

WRIT PETITION No.14445 of 2023

(per Hon'ble Sri Justice R.Raghunandan Rao)

21st February, 2024

JS/RJS