



**Kalpana Devi Vs. State of H.P. alongwith connected matter.**

**CWPIL No. 19 of 2023 & CWP No.2507 of 2023**

**CWPIL No.19 of 2023**

**24.04.2024**

**Present:** Mr. Sanjay Kumar and Mr. Rakesh Kumar Sharma, and Mr.Karan Thakur, Advocates, for the petitioner.

Mr. Navlesh Verma, Additional Advocate General, for respondents/State.

Respondent No.3 stands deleted.

Mr. Deven Khanna, Advocate, for respondent No.4- Sunder Singh Thakur.

Mr. Atharv Sharma, Advocate, for respondent No.5- Mohan Lal Brakta.

Mr. P.P. Chauhan & Ms. Shikha Rajta, Advocates, for respondent No.7-Ashish Butail through Video Conferencing.

Mr. Vikram Thakur & Mr. Vanshaj Azad, Advocates, for respondents No.6 and 8.

Mr. Pranjal Munjal with Mr. Ajeet Jaswal and Mr. Vedhant Ranta, Advocates, for respondent No.9.

**CWP No. 2507 of 2023**

Mr. Maninder Singh and Mr. Ankush Dass Sood, Senior Advocates with Mr. Vir Bahadur Verma, Mr. Prabhas Bajaj, Mr. Ragasanan Mohan, Mr. Ankit Dhiman, Mr. Gaurav Chaudhary, Mr. Mukul Sharma and Ms. Prajwal Busta, Advocates, for the petitioners.

Mr. Navlesh Verma, Additional Advocate General, for respondents/State.

Mr. Ashwani Chawla, Advocate, for respondent No.2.

Respondent No.4 stands deleted.

Mr. Deven Khanna, Advocate, for respondent No.5- Sunder Singh Thakur.

Mr. Atharv Sharma, Advocate, for respondent No.6 Mohan Lal Brakta.

Mr. P.P. Chauhan Advocate, Ms. Shikha Rajta,

...2...

Advocates, for respondent No.8-Ashish Butail through video conferencing.

Mr. Vikram Thakur & Mr. Vanshaj Azad, Advocates, for respondents No.7 and 9.

Mr. Pranjal Munjal, Mr. Ajeet Jaswal and Mr. Vedhant Ranta, Advocates, for respondent No.10.

In furtherance to order dated 02.04.2024, the cases are being heard on a day-to-day basis since 22.04.2023. The matter was adjourned twice for 23.04.2024 and 24.04.2024, enabling the counsel for respondents to address the arguments on their behalf.

2. No doubt, learned Advocate General has the first right of audience being the leader of the Bar. Learned Advocate General is also a designated Senior Advocate. Private respondents have also engaged Senior Advocate. Designated Senior Advocates constitute one class and are of one and the same rank and status, irrespective of their standing at the Bar and the Court which has assigned them such status of a designated Senior Advocate.

3. We were intending to hear learned Advocate General first, but, on 22.4.2024, he had expressed his inability to appear and argue on behalf of the State in these matters, for decision of respondent-State to engage other Senior Advocates and also for the direction given to him on behalf of State in this respect. Thus, on that day i.e. 22.4.2024, other counsels, including Senior Advocates,

...3...

representing private respondents were asked to address the arguments on their part, however, on their request matters were adjourned for next day i.e. 23.4.2024 for arguments.

4. On 23.4.2024, learned counsel representing the private respondents, except Mr. Deven Khanna, who is representing Mr. Sunder Singh Thakur, had avoided, rather shirked from addressing arguments on one pretext or the other, namely (a) that they had instructions not to address arguments before the arguments were concluded on behalf of the respondent-State or Advocate General, (b) that learned counsel was busy in other Court, and (c) by seeking time to have instructions in this regard.

5. On 23.4.2024, Mr. Deven Khanna, learned counsel for Mr. Sunder Singh Thakur had argued for about one and half hour by referring and touching historical aspect of post and appointment of Parliament Secretaries in the Commonwealth Countries, including India. Though in the beginning, he had submitted that he would be demonstrating by conjoint reading of various provisions of the Constitution of India that State Legislature has power to legislate the Himachal Pradesh Parliamentary Secretaries (Appointment, Salaries, Allowances, Powers, Privileges and Amenities) Act, 2006 (hereinafter referred to as 'impugned Act') but in the last, he requested to address this aspect on the next date, i.e. today (24.04.2024).

...4...

6. Admittedly, the core issue involved in the present case is whether State Legislature has legal competence to enact the impugned Act or not?

7. Today, Mr. Deven Khanna, Advocate has concluded his arguments after addressing the Court for about one and half hour, with contention that for reasons, i.e. convention, conjoint reading of Articles 208, 209, 309 with Entry Nos.38, 39 and 40 of the Constitution of India, presumption of validity of legislation, limited power of judicial review, and also for the reason, that there is no breach of Civil Liberty, Fundamental Rights or violation of constitutional provisions, hence, keeping in view the object and aim of the impugned Act, by giving widest interpretation, the enactment of impugned Act deserves to be protected and the petitions deserve to be dismissed with heavy costs. He has also contended that judgment in ***Bimolangshu Roy (Dead) through Legal Representatives v. State of Assam and another, (2018) 14 SCC 408***, is not applicable in present case.

8. After conclusion of arguments by Mr. Deven Khanna, Advocate, learned counsel for other private respondents were asked to address the arguments on their behalf because learned Additional Advocate General, appearing for the State, had requested yesterday as well as today for listing the case on 08/09.05.2024 so as to enable its learned Arguing Counsel Mr. Kapil Sibbal and

...5...

Mr. Mukul Rohtagi, Senior Advocates, engaged by State, to appear and address the arguments on behalf of the respondent-State.

9. Today, again by making the same excuses learned counsel for other private respondents have avoided either to appear in the case or to address the arguments and have shirked from their responsibilities towards the Court as well as their clients.

10. After conclusion of arguments addressed by Mr. Deven Khanna, it was conveyed that Mr. Ajay Sharma, Senior Advocate, was stated to be attending other Court at that time and would be coming to address the argument on behalf of his client Mr. Mohan Lal Brakta. But later on it was informed that he had left the Court premises. It is very strange that, in the aforesaid circumstances, when the matters were being heard by the Court and he had to address the arguments, he left the Court premises without even bothering to inform the Court.

11. Mr. Virender Chauhan, Senior Advocate appearing on behalf of respondents Mr. Ram Kumar Chaudhary and Mr. Kishori Lal had attended the hearing on 22/23.04.2024 but had desisted from addressing the arguments by seeking adjournment for next day. Today, Mr. Vikram Thakur, Advocate representing these respondents, has submitted that they have been directed

...6...

not to address the arguments today and also not before arguments are addressed on behalf of respondent-State. ◇

12. Mr. Pranjal Munjal, Advocate representing respondent Mr. Sanjay Awasthi, on 23.04.2024, had sought pass over of the matter with submission that he would be obtaining instructions from learned arguing counsel Mr. Neeraj Gupta, Senior Advocate, engaged by the said respondent but he did not come with the instructions. Today he has submitted that he has instructions to convey that the learned arguing counsel has been instructed not to argue the matter today and also not before arguments are addressed on behalf of the respondent-State.

13. Mr. P.P. Chauhan, Advocate on all three days, i.e. 22<sup>nd</sup>, 23<sup>rd</sup> and 24<sup>th</sup> April, 2024, attended the Court through Video Conferencing by sitting in his Chamber located adjacent to the High Court premises. Yesterday, when he was not audible through Video Conferencing, a request was made to him to attend the Court in person but he did not do so. Today he has made a request for adjournment of the matter to enable his client to engage a Senior Advocate by next date.

14. When no one came forward to address the arguments on behalf of private respondents, Mr. Maninder Singh, learned Senior Advocate, was allowed to conclude

...7...

rebuttal arguments to the arguments addressed by Mr. Deven Khanna, Advocate.

15. Mr. Sanjay Kumar, Advocate, counsel in CWPIIL No.19 of 2023, has reiterated the contents of his petition and rejoinder therein and has adopted the arguments addressed by Mr. Maninder Singh, Senior Advocate.

16. Earlier in October 2023, State had prayed to adjourn matters, by filing applications being CMP No.14932 in CWP No.2507 of 2023 and CMP No.14933 of 2023 in CWPIIL No.19 of 2023, on the ground that State had filed applications for transfer of present matters from this High Court to the Supreme Court. Later on on 4.11.2023, the said applications were withdrawn. It is also apt to record that the applications/Transfer Petitions No.2909 to 2911 of 2023, filed for transfer of the cases, stand dismissed by the Supreme Court, vide order dated 10.11.2023.

17. On 16.10.2023, 7.12.2023 and 3.1.2024, after hearing the matters at length, the matters were adjourned on requests made by and/or on behalf of respondents/learned Advocate General.

18. Earlier also, on 07.12.2023, 02.01.2024 and 03.01.2024, when learned Advocate General did not address the arguments at first instance, Mr. Shrawan Dogra, Senior Advocate, and Mr. Deven Khanna, Advocate, had addressed and concluded arguments on

...8...

behalf of their respective clients i.e. Mr. Ashish Butail and Mr. Sunder Singh Thakur.

19. An Advocate has twofold duties, one towards his client and another towards the Court. Being Officer of the Court, he has larger duty towards the Court. In present case, learned counsel representing the private respondents have failed to perform their prime duty to assist the Court in imparting justice by not addressing arguments despite being facilitated by the Court by granting time repeatedly. The act, conduct and behaviour of the learned counsel for private respondents has caused deep anguish to the Court.

20. In the aforesaid circumstances, we are constrained to infer that private respondents are not interested to address the arguments on their behalf as literally, their counsel are not only playing hide and seek but have also refused to perform their duties by arguing the matters on behalf of their clients, by abstaining from addressing the Court. Therefore, arguments on behalf of the private respondents are considered to be closed and concluded.

21. To give one more chance to the respondents-State to argue and conclude the matter on day-to-day basis, from the next date of hearing, we are adjourning the matters for 08.05.2024, as prayed by the respondents-State, with rider that, thereafter, the arguments shall be



...9...

heard and concluded on day-to-day basis by making precise submissions relevant to the matters by taking shortest possible time without repeating the arguments already addressed by Mr. Deven Khanna, Advocate, on behalf of respondent-Sunder Singh Thakur.

22. At this stage, Mr. Maninder Singh, learned Senior Advocate, referring to para 9 and 10 of the order dated 03.01.2024, passed in CMPs No.11341 of 2023 in CWP No.2507 of 2023 and 3802 of 2023 in CWPIIL No.19 of 2023, has contended that at the time of passing of order in these applications, filed for interim order against continuation of appointment of a private respondent as CPS, the Court had refrained from staying Notification dated 8.1.2024 (Annexure P-1 in CWPIIL No.19 of 2023 and Annexure P-3 in CWP No.2507 of 2023), for the reason that main matters were being heard and were at final stage, but now more than four months have passed thereafter, and counsel for respondents are not coming forward to address the arguments. Further that appointment of the private respondents as CPS is in violation of the verdict of the Supreme Court in ***Bimolangshu Roy (Dead) through Legal Representatives v. State of Assam and another, (2018) 14 SCC 408***; and ***State of Manipur v. Surajkumar Okram & others, 2022 SCC Online SC 130***. He has convassed that, therefore, particularly keeping in view the

...10...

provisions of Article 141 of the Constitution of India, order dated 03.01.2024 deserves to be modified by staying Notification dated 8.1.2023.

23. So far as the prayer made on behalf of the petitioner to modify order dated 3.1.2024 to stay the notification dated 08.01.2023 is concerned, the same shall be considered on next date of hearing, in case adjournment is caused on account of conduct of respondents and their counsel.

24. List for continuation for arguments on behalf of respondents-State on 08.05.2024, in aforesaid terms.

**CMP No.5431 of 2024 in CWPIl No.19 of 2023**

In view of the order passed in the main petition, but without commenting upon the averments made in the application and correctness thereof, this application is dismissed being infructuous.

Application stands disposed of.

**CMP No.2615 of 2024 in CWPIl No.19 of 2023**

This application was filed on behalf of the respondent-State on 11.3.2024 to adjourn the matter on the ground that some Impleadment Application has been filed by the State in **SLP (Civil) No.10879 of 2018, titled Rakesh Choubey vs The State of Chhattisgarh through the Chief Secretary Govt. of Chhattisgarh**, pending in the Supreme Court for its impleadment.

...11...

This application is devoid of merit. After filing of this application, for not having plausible and convincing reason to adjourn the hearing, matters have already been taken up for hearing on 12.03.2024 and subsequent thereto. Therefore, this application has also lost its efficacy and relevancy.

Accordingly, application is dismissed.

**( Vivek Singh Thakur )  
Judge.**

**April 24, 2024** (sd/Nisha)

**(Bipin C. Negi)  
Judge**

High Court of