



4. MR. H K JAGADISH  
IN CHARGE DIRECTOR,  
OFFICE OF DIRECTOR OF PROSECUTION  
6<sup>TH</sup> FLOOR, KHB COMPLEX,  
CAUVERY BHAVAN, KEMPEGOWDA ROAD,  
BANGALORE-560 009.

...RESPONDENTS

(BY SRI. ARIHANT R SUNGAY., ADVOCATE FOR  
SRI. SUMANA NAGANAND., ADVOCATE FOR R1;  
SMT. NILOUFER AKBAR., ADDITIONAL GOVERNMENT  
ADVOCATE FOR R2 TO R4)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO CALL FOR THE ENTIRE RECORDS ON THE FILE OF FIRST RESPONDENT BEARING NO.OE 28 PPE 2019(E) (PART-2) DATED 14/02/2022 PERTAINING TO APPOINTMENT OF FOURTH RESPONDENT AND ON PERUSAL OF THE SAME AND A) ISSUE A WRIT IN THE NATURE OF QUO WARRANTO OR ANY OTHER APPROPRIATE WRIT DECLARING THAT THE APPOINTMENT OF FOURTH RESPONDENT AS THE DIRECTOR OF PROSECUTION AND GOVERNMENT LITIGATION IS WITHOUT AUTHORITY OF LAW, ILLEGAL AND CONTRARY TO THE STATUTORY PROVISIONS OF SECTION 25A(2) OF THE CR.P.C AND B)PASS ANY OTHER ORDER OR ISSUE A WRIT OR DIRECTION.

THIS WRIT PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, **KRISHNA S DIXIT.J.**, MADE THE FOLLOWING:

**ORDER**

Petitioner, a public spirited person and a lawyer by avocation, is invoking the PIL jurisdiction of this court seeking a writ of *Quo Warranto* for voiding the appointment of 4<sup>th</sup> respondent herein (on



in-charge basi) to the office of the 'Director of Prosecution & Government litigation' since August 2019.

**II)** Learned counsel for the petitioner in support of the petition prayer makes the following submission:

**(a)** The office of the Director of Prosecution is a public office which has been established by the State Government as provided under Sec.25A of the Code of Criminal Procedure, 1973; the appointment to this office can be made by the State Government only if the candidate has been a practising advocate for not less than ten years as provided under sub-section (2) of Sec.25A; this requirement has not been satisfied in the case of 4<sup>th</sup> respondent herein.

**(b)** The appointment of a person having requisite qualification as prescribed by law, can be made to the office in question only with the concurrence of the Chief Justice of High Court as provided under sub-section (2) of Sec.25A of the Code; in the instant case, no such concurrence has been obtained.

**(c)** Appointment or placement of an official by way of in-charge arrangement cannot be made to the office in question, since several statutory & substantive functions have to be discharged by the incumbent. In any event, continuation of the present incumbent for an unreasonably long period of four & a half years is unjustified.



III) After service of notice, the first respondent has entered appearance through its learned Panel Counsel; the other respondents are represented by the learned Additional Government Advocate, who has this day filed the Statement of Objections in open court. Learned Additional Government Advocate makes submission in justification of the impugned appointment contending that:

(a) It is not a regular appointment to the office in question and therefore requirement of Sec.25A need not be complied with, the 4<sup>th</sup> respondent having been posted to officiate only on in-charge basis vide order dated 05.08.2019 in terms of Rule 68 of KCSR.

(b) Since eligible Deputy Directors in the department at the relevant time were not available, the 4<sup>th</sup> respondent has been placed in the office by way of in-charge arrangement to abhor the vacuum. Initially it was for a period of six months and the same has been continued periodically 'till a suitable person is appointed'.

(c) One Smt.Anjana Chauhan had filed Application No.20294/2022 *inter alia* challenging seniority & denial of promotion; the Karnataka State Administrative Tribunal vide order dated 16.08.2022 had directed consideration of her case for promotion. However, in Smt.Anjali Devi's W.P.No.202305/2022, the Kalaburagi Bench of this Court vide orders dated 18 & 19 October, 2022 had '*directed the State Government not to take any decision in the departmental promotion committee proceedings ...to the post*



*of Director of Prosecution ...*. The said petition is dismissed only on 29.11.2023.

**(d)** Now steps are being taken for making regular appointment to the said post as per the extant C & R Rules which prescribe selection & promotion from the eligible candidates in the cadre of Deputy Director. A letter is sent to the Department of Prosecution on 12.02.2024 seeking necessary documents to fill up the post by promotion.

So contending, learned Additional Government Advocate seeks dismissal of the writ petition.

**IV)** Having heard the learned counsel for the parties and having perused the petition papers, we are inclined to grant indulgence in the matter as under and for the following reasons:

**(A) AS TO THE DIRECTORATE OF PUBLIC PROSECUTION, ITS PURPOSE & FUNCTIONS:**

**(a)** In England, during the 19<sup>th</sup> century, there was considerable agitation for the establishment of a Public Prosecutor's office on the American and Continental Models, and that resulted into the creation of the office of Director of Public Prosecutions in 1879. The DPP is the head of Crown Prosecution Service (CPS). He is appointed by the Attorney General and is fairly independent of the government. DPP's role includes deciding



whether to prosecute cases and advising the police on investigations. The DPP has significant powers to make decisions about how cases are to be conducted on normative basis and also to ensure fairness in the prosecution process. The office of Director of Prosecution plays a pivotal role in the prosecution of offenders under a plethora of criminal statutes. “Prosecutors are gate keepers to the criminal justice process”, said Avory J, in **R vs. BANKS, (1916) 2 KB 621**. Independence of the prosecutor’s function stands at the heart of the rule of law. They do not take orders from anyone, but do things in their discretion independent of the Executive.

**(b)** Section 25A of the Code provides for the creation of the Directorate of Public Prosecution. The relevant provisions of this section i.e., sub-sections (1), (2), (3) & (7) are couched in the following text:

*“(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) xxx (5) xxx (6) xxx*

*(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.”*

**(c)** Karnataka State Amendment to Sec.25A(2) of the Code

reads as under:

*“The post of Director of prosecution and Government litigations, or a Deputy Director of Prosecution and other cadres shall be filed in accordance with the Cadre and Recruitment Rules framed under the Karnataka State Civil Services Act, 1978 (Karnataka Act 14 of 1990)”.*

Amendment to sub-section (5) of Sec.25A has the following text:

*“Every Public Prosecutor, Additional Public Prosecutor appointed by the State Government from the cadre of Prosecutors recruited under the recruitment rules framed by the Government under the Karnataka State Civil Services Act, 1978 shall be subordinate to the Director of Prosecution and Government litigations and every Public Prosecutor, Additional Prosecutor and Special Prosecutor appointed under sub-section (8) of Section 24 shall be subordinate to the Advocate General”.*

It is relevant to note that the State Government in exercise of power availing under sub-section (1) of Sec.25A has promulgated the Karnataka Prosecutions and Government Litigations



(Recruitment) Rules, 2012 vide Notification No.HD 621 PPE 2012, Bengaluru dated 13.03.2014 *inter alia* providing for the appointment to the post of Director of Prosecution, by selection from amongst the eligible candidates in the cadre of Deputy Directors in the Directorate. This is by way of promotion.

(d) Regard being had to the significant functions which the DPP discharges in the public interest, the Parliament has enacted Section 25A in the Code. It cannot be disputed that the office of DPP is a public office. For making appointment to the said office, the prescribed mode is promotion by selection from amongst the Deputy Directors of Public Prosecution. The Departmental Promotion Committee undertakes the selection process. Admittedly, the present incumbent namely the fourth respondent herein does not fill the character prescribed by law. He is only an official in the Law Secretariat of the Government. The vacancy having occurred in August, 2019, he has been placed in the additional in-charge of the Office of DPP vide order dated 05.08.2019 initially for a period of six months. The said arrangement is being continued by a slew of extension till date.



**(B)** AS TO QUALIFICATION & CONDITIONS OF APPOINTMENT TO THE OFFICE OF DPP:

**(a)** Several important statutory functions that are usually discharged by the prosecutors are attached to DPP. True it is that it is the government that prescribes the conditions of service of the personnel of the Directorate. However, all this does not derogate from the ordained autonomy of DPP. Therefore, the Directorate and make appointment of the personnel. by its very nature & stature cannot be conventionally treated as an ordinary department of the Government. The very object of creating a separate Directorate for the purpose of prosecution of criminal cases is to ensure a fair measure of autonomy and to enhance efficacy level of the office. The Public Prosecutors & Additional Public Prosecutors are subordinate to and their performance is supervised by the DPP. Even with regard to withdrawal of prosecution under sec. 321 of the Code, it is the statutory responsibility of the Public Prosecutor alone to apply his mind and decide vide **BALVANT SINGH v. STATE OF BIHAR: AIR 1977 SC 2265**. This power is non-negotiable and cannot be bartered away in favour of those who may be above him on the administrative side.





(b) The provisions of Sec.25A of the Code are as clear as gangetic waters. They prescribe specific qualification & condition for appointment to the august office of DPP. There is no much dispute that the official of the Law Secretariat of the Government i.e., the 4<sup>th</sup> respondent who is in-charge of the office does not possess the prescribed qualification. That being the position, we are dismayed that such an official has been given additional charge of the office of DPP vide order dated 5.8.2019 for an initial period of six months and thereafter, the same is being renewed periodically. How such an arrangement could be made and continued with a slew of extension, is un-understandable, to say the least. Its because an when the incumbent on in-charge basis cannot discharge the substantive functions of the said office. No enabling rule or a ruling is cited to justify such an act. **Justice M.Rama**

**Jois in “SERVICES UNDER THE STATE” N.M.TRIPATI**

**Publication, 1987 at page 522 writes as under:**

*“Placing a subordinate officer in independent charge of the current duties of a vacant post does not amount to promotion to the higher post. Officiating appointments and in-charge arrangements are well understood terms in civil service. When an officer is appointed to officiate in a higher post he is invested with the powers of the higher post; but when he is placed in charge of the current duties of a vacant post in higher category, whether in addition to his own*



*duties or independently, he cannot exercise any of the statutory powers of the office; he can merely perform day to day office duties only.”*

Therefore, We deprecates such an unhealthy practice of placing any official in charge of the office of the Director of PP.

**(C) AS TO CONCURRENCE OF CHIEF JUSTICE AS A PRECONDITION FOR APPOINTMENT:**

**(a)** The provisions of Section 25A of the Code prescribe concurrence of the Chief Justice of the High Court, as a *sine qua non* for appointment to the post of Director. Several Central & State legislations prescribe such concurrence in similar circumstances. This aspect of the matter has been discussed by the Apex Court in **JUSTICE CHANDRASEKHARIAH vs. JANEKERE C. KRISHNA, AIR 2013 SC 726**, that arose under the provisions of The Karnataka Lokayukta Act, 1984 and the appointment made to the office of Upa-Lokayukta *sans* such a concurrence, has been invalidated. The object of prescribing such a condition is to ensure that only a worthy candidate is placed in the said office. The candidate should have a high standing in the occupation of law, and his credentials should be unimpeachable. Usually, the information about credentials of the candidates lies with or can be secured by the office of Chief Justice. Therefore, such a



requirement cannot be dispensed with even whilst placing someone in the office by way of in-charge, independent charge or additional charge arrangement. An argument to the contrary would virtually strike the death knell of Section 25A of the Code.

**(b)** It is not that in no circumstance, in-charge/independent arrangement cannot be made; it can be, when exigencies of public administration warrant. However, such recourse may be justified only if its tenure is too short to be little. In no circumstance, it can continue indefinitely as has deplorably happened in the instant case. Justice Rama Jois *supra* writes at Page 523 as under:

*“Incharge arrangement permitted under the rules is only to meet an emergency. Therefore, it cannot be continued indefinitely without considering the case of the officials concerned for promotion...”*

Admittedly, no such concurrence has been secured while placing the 4<sup>th</sup> respondent in the additional charge of the office of DPP. The contention of learned Additional Government Advocate that there were service disputes amongst the candidates *inter se* in the feeder cadre and therefore, in-charge arrangement was made, is difficult to countenance. Firstly, no such arrangement is permissible regard being had to the statutory functions attached to the office and that, an in-charge holder cannot discharge such functions vide



**B.N.DHOTRAD VS. THE BOARD OF DIRECTORS/CUM APPELLATE AUTHORITY, ILR 2006 KAR 3163.** Secondly, the feeder cadre is of Deputy Directors and therefore, only from amongst them, one could be placed by way of in-charge arrangement, and none else. This view accords with Rule 32 read with Rule 68 of KSCR. Now that the service dispute as to the seniority & promotion which allegedly had interdicted regular appointment to the post of DPP has come to an end on the dismissal of W.P.No.202305/2022 on 29.11.2023. In the Statement of Objections, it is specifically said that the steps are being taken for making regular appointment from amongst the Deputy Directors. This needs to be done on a war footing inasmuch as, no statutory functions of the office can be discharged by the official holding additional charge and thus, it has been virtually rendered dysfunctional

In the above circumstances, this petition succeeds with the following directions:

[i] A Writ of Quo Warranto issues removing the 4<sup>th</sup> respondent from the office of the Director of Public Prosecution and Government Litigation, forthwith, if he has not already given up the charge thereof.



[ii] A Writ of Mandamus issues to the respondent-Government to select and appoint an eligible & qualified candidate to the office in question with the concurrence of Chief Justice of this court and in accordance with law.

[iii] The direction in the immediately preceding paragraph be accomplished within an outer limit of eight weeks and compliance thereof shall be reported to the Registrar General of this Court within one week next following.

Costs reluctantly made easy.

**Sd/-  
CHIEF JUSTICE**

**Sd/-  
JUDGE**

Snb/  
List No.: 1 SI No.: 58