

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.03.2023

PRONOUNCED ON : 31.03.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.13832 of 2013

K.Marimuthu

... Petitioner

Vs.

- 1.The Secretary to Government,
Government of India
Ministry of Finance
Department of Economic Affairs
North Block, Central Sectt.
New Delhi – 110 001.
- 2.The Secretary to Government,
Government of India
Ministry of Home Affairs
North Block, Central Sectt.
New Delhi – 110 001.
- 3.The General Manager,
Department of Banking Operations and Development
Reserve Bank of India,
Central Office, 12th Floor,
Shahid Bhagat Singh Marg,
Fort, Mumbai – 400 001.

4. The Chairman,
National Commission for Scheduled Castes,
B wing, 5th Floor, Lok Nayak Bhavan,
New Delhi – 110 003.
5. The Chairman,
National Commission for Scheduled Tribes,
B wing, 6th Floor, Lok Nayak Bhavan,
New Delhi – 110 003.
6. The Director,
National Commission for schedule Castes,
Floor – 2, Block – 5,
Shastri Bhavan, Chennai 600 006.
7. The Chairman & Managing Director,
Allahabad Bank,
Head Office
No.2, N.S. Kolkatta – 700 001.
8. Chairman & Managing Director,
Andhra Bank
Head Office, Dr.Pattabi Bhavan,
5-9-11, Secretariat Road,
Saifabad, Hyderabad – 500 004.
9. The Chairman & Managing Director,
Bank of Baroda,
Head Office,
Maganwadi, Sayajiganj,
Baroda – 390 005.
10. The Chairman & Managing Director,
Bank of India
Head Office, Star House,
C-5, G Block, Bandra-Kurla Complex
Bandra (East), Mumbai 400 051.

11. Chairman & Managing Director,
Bank of Maharashtra,
Head Office
Lokmangal, 1501, Shivaji Nagar,
Pune – 411 005.
12. Chairman & Managing Director,
Canara Bank,
Head Office,
No.112, J C Road,
Bangalore – 560 002.
13. Chairman & Managing Director,
Central Bank of India
Head Office
Chandermukhi, Nariman Point,
Mumbai – 400 021.
14. Chairman & Managing Director,
Corporation Bank, Head Office,
Mangaladevi Temple Road, Pandeewar,
Mangalore – 575 001, Karnataka State.
15. The Chairman & Managing Director,
Dena Bank,
Head Office, Corporate Centre,
C-10, G Block, Bundra Kurla Complex,
Bandra East, Mumbai – 400 051.
16. Chairman & Managing Director,
Indian Bank,
Head Office
No.66, Rajaji Salai, Chennai – 600 001.

17. Chairman & Managing Director,
Indian Overseas Bank,
Head Office
763 Anna Salai, Chennai – 600 002.
18. Chairman & Managing Director,
Oriental Bank of Commerce,
Head Office
Plot No.5, Sector 32, Institutional Area,
Gurgaon – 122 001, Haryana State.
19. Chairman & Managing Director,
Punjab National Bank,
Rajendra Bhavan, Rajendra Place,
New Delhi – 110 008.
20. Chairman & Managing Director,
Punjab and Sind Bank,
Head Office, Bank House,
21, Rajendra Place,
New Delhi – 110 125.
21. Chairman & Managing Director,
Syndicate Bank,
Head Office
Manipal – 576 104.
22. Chairman & Managing Director,
UCO Bank,
Head Office,
10, BTM Sarani, Kolkata – 700 001.
23. Chairman & Managing Director,
Union Bank of India
Head Office, Union Bank Bhavan,
No.293, Vidhanm Bhavan Mag,
NarimanmPoin, Mumbai – 400 021.

24. Chairman & Managing Director,
United Bank of India
Head Office
No.11, Hemanta Basu Sarani, Kolkatta – 700 001.
25. Chairman & Managing Director,
Vijaya Bank
Head Office
41/2, M.G. Road, Bangalore – 560 001.
26. Chairman & Managing Director,
State Bank of India,
Head Office, State Bank Bhawan,
Madam Cama Road,
Mumbai – 400 021.
27. The Chairman & Managing Director,
State Bank of Bikaner & Jaipur,
Head Office
Tilak Marg, C-Scheme, Jaipur – 302 025.
28. Chairman & Managing Director,
State Bank of Hyderabad,
Head Office,
Gunfoundry, Hyderabad – 500 001.
29. Chairman & Managing Director,
State Bank of Mysore,
Head Office
K.G. Road, Bangalore – 560 254.
30. Chairman & Managing Director,
State Bank of Patiala,
Head Office,
The Mall, Patiala – 147 001
Punjab State.

31.Chairman & Managing Director,
State Bank of Travancore,
Head Office,
Poojapura, Tiruvandrum – 695012, Kerala.

32.Chairman & Managing Director,
Industrial Development Bank of India, (IDIB)
Head Office, IDBI Tower,
WTC Complex, Cuffe Parade, Mumbai – 400 005.

33.Chairman & Managing Director,
Small Industries Development Bank of India, (SIDBI)
Head Office, SIDBI Towers,
15 Ashok Marg, Lucknow – 226 001.

34.Managing Director,
REPCO Bank,
Head Office, Repco Towers,
33, North Usman Road,
T.Nagar, Chennai 600 017.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the entire files pertaining to the impugned proceedings issued by the 3rd respondent herein in No DBOD.No.inf.BC.48/11.01.009/2006-07 dated 18th December 2006 specifically in concern with the withdrawn of the Sl.No.35 of the circular therein in connection with the circular No DBOD No. BP. BC. 62/C. 469(W)-91 dated 4th January 1991 and quash the very same Sl.No.35 of the said circular alone as arbitrary, irrelevant, unreasonable, and violative of Art. 14, 15 and clause (1), (4), (4-A) of Art.16 of the Constitution of India and Consequently direct the 7th to 34th respondents to conduct survey on the

available Panel of advocates of their Bank at present and report the SC/ST/OBC advocates out of the available strength at present with its percentage of each category wise advocates in all India level / State level / Region level / Zonal level according to their administrative structure and consequently direct the 7 to 34 respondents and other public sector banks to take special endeavor / special drive shall be made to encourage advocates belonging to the SC/ST/OBC by enrolling them in the panel and allocating the work to them as required by the clause 2.1 and to ensure the experience for panel advocate as 5 years as fixed in clause 1.2 of the said RBI Circular No. DBOD. No. BP. BC. 62 / C. 469 (W) – 91 dated 4th January 1991, and consequently direct them to ensure themselves with suitable Board approved policies / procedures for substituting the same as required in the Circular No. BC.48 / 11.01.009 / 2006 – 07 dated 18th December 2006 and consequently direct the 7 to 34 respondents and other public sector banks to include the SC/ST/OBC advocates in each branch including the Stressed Assets Recovery Branches of the Public Sector Banks, irrespective of their volume of work and need of advocates and consequently direct to allot the alternative and equal cases including the DRT / DART Court cases and consequently direct to ensure pay equal fees to the SC/ST/OBC advocates along with other advocates and consequently direct to maintain proper Rotation Register for distribution of cases evenly and consequently direct to create uniform format of application for the empanelment of advocates with the specific reference of SC/ST/OBC advocates particulars and consequently and strictly direct the 7 to 34 respondents Banks and other public sector banks to avoid further escapism, delay and domination of

monopoly of certain interested community advocates and interested advocates of the officials of the said banks in their panel and consequently direct the 1st respondent to convene a monitoring Committee comprising the 2nd to 5th respondents in All India level and state level for its strict and effective implementation and consequently direct the 4th and 5th respondent to conduct special investigation on this subject independently on their own way in all India level with the 7 to 34 respondents Banks and other public sector banks under Art.338 and under Art.338A of the Constitution respectively and submit the special report to the President of India and to the Prime Minister of India to take necessary follow up steps for the adequate representation of panel of advocates in the Nationalised and Public Sector Banks.

For Petitioner	: No Appearance
For R1 & R2	: Mr.M.Arvind Kumar Senior Panel Counsel
For R3	: Mr.T.Poornam
For R4 & R5	: No Appearance
For R6 & R16	: Mr.V.Kalyana Raman For M/s.Aiyar & Dolia
For R7	: Mr.G.Sasee Dhevi
For R10	: Mr.F.B.Benjamin George
For R11	: Mrs.S.Pramila For M/s.PMR Associates

For R12 : Mr.S.Kesavan

For R13, R27 to R30 : Mr.Mohandas

For R14 & R31 : Mr.Sethuraman

For R17 : Mrs.T.Thirupura Sundari

For R18 : M/s.Mutrthy and Vasam

For R20 : Mr.Y.Jyothish Chander

For R21 : Mr.T.Hemalatha

For R22 : Mr.Srinath Sridevan
Senior Counsel
For Mr.T.K.Bhaskar

For R23 : Mr.M.Muthuperiyasamy

For R24 : Mr.P.S.Ramesh

For R25 : Mr.R.Imayavaramban
For M/s. Ramalingam & Associates

For R33 : Mr.K.Balamurali
For M/s.Shivakumar and Suresh

For R34 : Mr.A.Ilangovan

For R8, R9, R15, R19 : Not Ready in Notice
R26 & R32

ORDER

The Writ of Certiorified Mandamus has been instituted questioning the validity of the withdrawal of the circular issued by the Reserve Bank of India (RBI) in the matter of appointment of the Panel Advocates for the Nationalised Banks in All India Level / State Level / Regional Level / Zone Level. Further directions are sought for to empanel the Advocates by following the established principles of law and to provide adequate representations to the candidates belongs to SC/ST/OBC Communities.

2. The petitioner in person instituted the present writ petition on the ground that he was deprived of his opportunity to be empanelled as Advocate in Banks despite his applications to the respondent / Banks.

3. There are 19 Nationalised Banks plus 6 Banks in Nationalised State Bank of India Group Public Sector Banks and 3 other Public Sector Banks having its branches at the time of filing the present writ petition as follows:

Nationalised Public Sector Banks

<i>Sl. No.</i>	<i>Name of the Bank</i>	<i>Branches</i>	<i>Sl. No.</i>	<i>Name of the Bank</i>	<i>Branches</i>
1	Allahabad Bank	2217	11	Indian Overseas Bank	2650
2	Andhra Bank	1425	12	Oriental Bank of Commerce	1427
3	Bank of Baroda	2916	13	Punjab National Bank	4323
4	Bank of India	2934	14	Punjab & Sind Bank	858
5	Bank of Maharashtra	1407	15	Syndicate Bank	2246
6	Canara Bank	2740	16	UCO Bank	2058
7	Central Bank of India	3527	17	Union Bank of India	2569
8	Corporation Bank	1028	18	United Bank of India	1445
9	Dena Bank	1093	19	Vijaya Bank	1101
10	Indian Bank	1923			
	Total	21,210		Total	18,677
	Grand Total	21,210 18,677 39,887			

Public Sector Banks – State Bank of India Group

<i>Sl. No.</i>	<i>Name of the Bank</i>	<i>Branches</i>	<i>Sl. No.</i>	<i>Name of the Bank</i>	<i>Branches</i>
1	State Bank of India	14,000	4	State Bank of Mysore	671
2	State Bank of Bikaner & Jaipur	860	5	State Bank of Patiala	838
3	State Bank of Hyderabad	1500	6	State Bank of Travancore	712
	Total	16,360		Total	2,221
	Grand Total	16,360 2,221 18,581			

Public Sector Banks – Other Banks

<i>Sl.No.</i>	<i>Name of the Bank</i>	<i>Branches</i>
1	IDBI	509
2	SIDBI	84
3	Repc Bank	77
		670

4. The Nationalised and other Public Sector Banks are engaging the Advocates for conducting their litigations through their panel of Advocates and entrusting legal works. The number of Advocates is being increased time to time depending upon the size of the branch and quantum of legal work.

5. There is no uniform procedure prescribed for empanelment of Advocates to the Government of India and to the Reserve Bank of India (RBI). No sufficient opportunity and adequate representations were provided to the SC/ST/OBC category Advocates in the matter of empanelment of Advocates in the Nationalised / Public Sector Banks. Thus, on the advice of the Government of India, the Reserve Bank of India has issued the directions and guidelines in No.DBOD. No.BP.BC.62/C.469 (W)-91 dated 4th January, 1991. The reasons and object of the said circular is as follows:

“The system and procedure followed by banks for the scrutiny and appointment of advocates on the panel of advocates to attend to their litigation cases have been reviewed by us and it has been decided that public sector banks should follow a uniform procedure for empanelment of advocates. Accordingly, suitable guide lines for banks have been prepared in consultation with the Government and are forwarded herewith. We advise that the banks should prepare fresh panel of advocates immediately by meticulously following these guide lines. It also is ensured that the reviews of panels of advocates contemplated under the guidelines are under taken on an ongoing basis.”

7. As per the guidelines issued in Clause 1.2, of Reserve Bank of India in Letter No. DBOD. No. BP. BC. 62 / C. 469 (W) - 91 dated 4th January 1991, addressed to all Public Sector Banks. Some of the important guide lines are fixed for the empanelment of advocates are as follows:

- a) *As per clause 1.1 “Each Branch should have at least one advocate in the vicinity of the branch for entrusting legal work. The number of advocates*

can be increased depending upon the size of the branch and quantum of legal work.”

- b) *As per clause 1.2 “The advocates being included in the panel should have put in at least 5 years of successful practice at the Bar on the civil side and they should be advocates of undoubtful legal acumen and unblemished integrity.”*
- c) *As per clause 1.3 “Advocates should have experience in ending commercial matters or bank's suits and be conversant with banking laws.”*
- d) *As per clause 1.4 “Advocates exclusively practicing in criminal courts can be recommended for attending criminal work, well reputed advocates in the area may be included in the panel, it should be ensured that they will be able to devote sufficient time and personal attendance to the Bank's work and also that they do not represent claims and ideologies advice to those of the bank.”*
- e) *As per clause 1.5 “Advocates should also be willing to abide by the Bank's terms and conditions as to fees, charges, submissions of pleading for approval etc. Successful advocates, though less eminent, may also be chosen provided they can be depended upon to bestow their personal attention*

and are otherwise suitable for handling the bank's cases.

- f) *As per clause 2.1 “other things being equal, special endeavor should be made to encourage advocates belonging to the SC / ST / OBC by enrolling them in the panels and allocating the work to them.”*
- g) *As per clause 3.1 “In the case of advocates already in the existing panel, a brief resume of the work already handled by them, with specific recommendations whether they should be continued in the panel or otherwise, may be prepared.”*
- h) *As per clause 4.2 “Efficiency and integrity should be main criteria for appointment.”*

8. The very purpose and intention of the issuance of the above said Clause 2.1 of the above said circular is to safe guard the right of the SC/ST/OBC advocates to include them sufficiently in their panel of public sector nationalized banks as there is no constitutional provisions were available and the Clause 2.1 of the above circular reads as follows:

“Other things being equal, special endeavor should be made to encourage advocates belonging to the SC / ST / OBC by enrolling them

in the panels and allocating the work to them.”

The above said portion of the circular is still not adhered strictly by the none of the public sector nationalized banks is not correct.

9. The petitioner further states that in the mean time, the RBI has issued a letter in No DBOD.No. inf. BC. 48/11.01.009/2006-07 dated 18th December 2006 and has withdrawn the RBI Circular No. DBOD. No. BP. BC. 62 / C. 469 (W) - 91 dated 4th January 1991, addressed to all Public Sector Banks and the reasons for withdrawal is stated as follows:

“in the light of the changes that have taken place in the banking scenario, it was observed that certain circulars issued to Public Sector Banks (PSBs) during the period from January 1991 to June 2004 on operational matters like recovery of PA dues, housekeeping, branch network, customer service etc, have since lost their relevance. In view thereof, a comprehensive review of all such circulars issued during the afore said period was carried out. It has now been decided issued our a to with Government of India to withdraw 41 circulars, as detailed in the enclosed statement.

You are advised to carefully go through the list of

circulars in the enclosed statement and in case it is felt that the instructions in some of the circulars are still relevant for your bank, kindly ensure that they are implemented with suitable Board approved policies/ procedures for substituting the same.”

10. The petitioner further submits that the circular in No. DBOD. NO. inf. BC. 48 / 11.01.009 / 2006 - 07 dated 18 December 2006 in connection with the withdrawal of 41 circulars including the withdrawal of the SI. No. 35 of the circular No DBOD. No. BP. BC.62 / C. 469 (W) - 91 dated 4th January 1991 is irrelevant, unreasonable, arbitrary and violative of Art. 14, 15, 16 (1) and (4) of the Constitution of India for the following reasons:

- a) *First of all the reasons stated in the above said withdrawn letter is "in the light of the changes that have taken place in the banking scenario, it was observed that certain circulars issued to Public Sector Banks (PSBs) during the period from January 191 to June 2004 on operational matters like recovery of NPA dues, housekeeping, branch network, customer service etc, have since lost their relevance" is false one in connection*

with the empanelment of advocate, especially in concern with the SC/ST/OBC advocates.

- b) *There is no connection between the empanelment of advocates especially for the empanelment of SC/ST/OBC advocates with the recovery of NPA dues, housekeeping, branch net work, customer service etc as stated for the withdrawal of the said circular.*
- c) *No sufficient opportunity and places were given to SC/ST/OBC advocates unto this date is obvious.*
- d) *Moreover, no comprehensive review of all such circulars issued during the aforesaid period, especially in concern with the empanelment of advocates hailed from SC/ST/OBC. Without assessing and conducting comprehensive review the status and position of SC/ST/OBC advocates in Public Sector Banks held. Hence, the withdrawn is arbitrary and illegal.*
- e) *The RBI Has committed its blunder with malafied intention and misdirected the Government of India to withdraw the said circular in serial No. 35 regarding the empanelment of advocate is not correct.*
- f) *Because of the said circular the public sector*

nationalized banks have wantonly failed and escape from their liability to empanel the SC/ST/OBC advocates are not correct.

11. The above said circular was withdrawn in concern with the empanelment of advocates, the said circular has instructed all the Managing Directors of the Public Sector Banks as “You are advised to carefully go through the list of circulars in the enclosed statement and in case it is felt that the instructions in some of the circulars are still relevant for your bank, kindly ensure that they are implemented with suitable Board approved policies/ procedures for substituting the same.”

12. The petitioner states that the circular was instructed as above, it was not carried out by the 7 to 34 respondents and the same was not supervised, monitored and corrected either by the RBI or by the Government of India is not correct.

13. The very purpose of the RBI guidelines in letter No DBOD No. inf.BC. 48 / 11.01.009/2006-07 dated 18th December 2006 is not only to withdraw the said circular but to ensure themselves whether they are

implemented with suitable Board approved policies / Procedures substituting the same, which was not complied by the none of the nationalized public sector banks is not correct.

14. The above said Public Sector Banks have 59, 138 Branches, the empanelled advocates would be at least it's three times approximately as 59, 138 x 3 = 1,77,414 and more may be there. It is a mass employment to the empanelled advocates of the Public Sector banks. Out of the above said 1,77,414 panel advocates, distribution of 15% to SCs is 26,612 and 7% to STs is 12,419 and 27% to OBCs is 47,902. Such a big and mass employment was not opened to the SC/ST/OBC advocates, even after the nationalization and issuance of specific guidelines to empanel the SC/ST/OBC advocates is not correct.

15. The petitioner with reference to the respondents / Banks filed applications and obtained information under the Right to Information Act (RTI) regarding the empanelment of Advocates by the Banks. The petitioners have narrated the information provided by each respondents / Banks regarding the procedures being adopted for empanelment of

Advocates for conducting litigations and for rendering legal opinions. Since none of the procedures adopted are in compliance with the Reserve Bank of India (RBI) circular, which were prevailing for empanelment of Advocates, the petitioner filed the writ petition to quash the withdrawal of those circular issued by the Reserve Bank of India (RBI) for the purpose of empanelment of Lawyers in Nationalised Banks and Public Sector Banks.

16. The reasons stated by the Reserve Bank of India (RBI) for withdrawal of their common circulars, issued to all the Banks for empanelment of Lawyers reveals that due to the changes that has been taken place in the banking scenario and to provide autonomy to such Nationalised Banks and Public Sector Banks, the Reserve Bank of India (RBI) withdrew 41 circulars issued by them in consultation with the Government of India. However, in the said order the Reserve Bank of India (RBI) has stated that the Banks are advised to go through the list of circulars and in case it is felt that the instructions in some of the circulars are still relevant for their Banks, they shall ensure that they are implemented with suitable board approval policy / procedure for substituting the same.

17. Therefore, the Reserve Bank of India (RBI) never intended to withdraw the entire circulars by scrapping the contents in those circulars. The idea was to give autonomous to the Banks enabling them to empanel Advocates by following the procedures. The Reserve Bank of India (RBI) unambiguously not intended to give free hand to choose the Lawyers of their choice but intended to follow the procedures and certain relevant procedures prevailing in the withdrawn circulars also may be adopted suitably, while empanelment of Advocates.

18. The Reserve Bank of India (RBI) filed a counter affidavit stating that the petitioner has no *locus standi* to seek any relief as prayed for. The petitioner has misconstrued the scope and purpose of the circular issued by the Reserve Bank of India (RBI) on 18th December, 2006. There is no violation of Fundamental, Legal or Statutory Rights of the petitioner. The petitioner has sought for multiple reliefs, which involves the performance of the continuous duty of the respondents, which would not normally be allowed by the Courts. The impugned circulars were issued in consultation with the Government of India. Therefore, the liberalised regime requires more autonomy for the Banks and the Public Sector Banks require more

operational autonomy to conduct their Bank affairs.

19. The learned counsel appearing on behalf of the 3rd respondent Reserve Bank of India (RBI) drew the attention of this Court with reference to the advice given by the Reserve Bank of India (RBI) to the Nationalised Banks and Public Sector Banks. The Banks were advised to go through the list of circulars in the enclosed statement and in case it is felt that the instructions in some of the circulars are still relevant for their Bank, they shall ensure that it is implemented with suitable board approval policy / procedure for substituting the same. Therefore, the Reserve Bank of India (RBI) has not intended to cause any discretion in the matter of empanelment of Lawyers in the Nationalised Banks and Public Sector Banks. The Banks were given autonomy to form their procedures and some of the procedures prevailing through the Reserve Bank of India (RBI) circulars if found suitable the same shall be substituted.

20. Some of the Banks filed the circulars issued by them for empanelments of Advocates. Perusal of the circulars issued by the respective Nationalised Banks and Public Sector Banks would reveal that

such procedures provide eligibility criteria for the educational qualification and process of empanelment. Broadly it can be categorised as **Criteria for Empanelment, Process of Empanelment, Authority for Empanelment, Preparation of Revised list by the Zones, Distribution / allocation of works, Other conditions for Empanelment, Review of the Performance, The Parameters for reviewing the performance of the Panel Advocate, De-Paneling of Advocate, and Review at Head Office level. Application format, Reporting format, Feedback from Branches are also part of the procedures.**

21. The above system is followed by the Bank of India. Some other Banks have not categorised the procedures as done by the 10th respondent / the Bank of India. The 13th respondent / Central Bank of India issued guidelines for empanelment of Advocates in Banks panel, where there are no such detailed procedures. The Small Industries Development Bank of India is maintaining improved procedures, wherein also eligibility criteria, relaxation in eligibility criteria and other procedures are prescribed akin to that of the procedures approved by the 10th respondent / Bank of India. The Small Industries Development Bank of India seems to be adopting an

improved procedure, which is transparent but whether it satisfies the principles of equality under Article 14 are to be considered by this Court. Some other respondents have neither filed their procedures nor filed a counter affidavit.

22. The issue to be considered is whether the empanelment of Lawyers in the Nationalised Banks and Public Sector Banks are done in compliance with the mandates of the Constitution of India.

23. Going through the procedures now being adopted by the Nationalised Banks and Public Sector Banks, this Court could able to form an opinion that equal opportunity for empanelment has been denied to the eligible and meritorious candidates. The procedures though seem to be transparent, but not in compliance with the equality clause enunciated under the Constitution of India. Equal opportunity in public employment is the Constitutional mandate. No doubt, empanelment of Lawyer cannot be construed as an appointment into the service of the Nationalised Banks and Public Sector Banks. Lawyers are engaged on contract basis for a particular tenure on terms and conditions and by fixing remuneration. However, the

Nationalised Banks and Public Sector Banks are public institutions are 'State' within the meaning of Article 12 of the Constitution of India. Therefore, they cannot shirk their responsibility from complying with the mandatory principles of equal opportunity enunciated under the Indian Constitution.

24. State shall not deny to any person's equality before law or equal the protection of laws within the territory. Article 16(1) enumerates "*There shall be equality of opportunity for all citizens in the matter relating to employment or appointment to any office under the State*". The Nationalised Banks and the Public Sector Banks are the public institutions dealing with the public money. Thus, the empanelled Advocates are also performing their legal duties to the Bank in order to protect the public institution and the customers of the Bank. Therefore, the empanelled Lawyers are performing the public duties to protect the interest of the public, who all are investors, borrowers, etc., from the Nationalised Banks and Public Sector Banks. Therefore, it is the empanelled Lawyers, who all are representing the Nationalised Banks and Public Sector Banks and are performing the public duties for all purposes. Whether it is a contractual

employment, temporary engagements or otherwise, the procedure to be adopted by such Banks must be transparent and in compliance with the mandates of the Constitution.

25. Certain decisions may be taken to engage Specialised designated or Senior Counsels by considering certain legal complications or otherwise by any Bank at the discretion of the Competent Authorities, which is to be considered as an exception. In other words, the empanelled Lawyers engaging a designated Senior Counsel to protect the interest of the Bank in a particular case may be at the discretion of the Competent Authority concerned. Such special engagements in a case of complex nature cannot be compared with the empanelment of Lawyers for handling the regular cases of the Bank. Therefore, the empanelments of Lawyers to conduct the litigations regularly are to be done only by following the established principles and in compliance with the Constitution of India.

26. The Bank performs several functions in the growing economic scenario. The need for banking developments are inevitable. Citizen are depending on the Banks for their needs and for their transactions. The

services of the Banks became imminent in our Great Nation. Thus, the administration and the appointment procedures including empanelment of Lawyers to conduct litigations are to be done transparently and in compliance with the Constitutional requirements and rules of natural justice.

27. Going through the procedures now prevailing for the empanelment of the Lawyers in the respondents / Banks, this Court has no hesitation in arriving at a conclusion that they are not in compliance with the Constitutional mandates and the empanelment of Lawyers are now being done mostly based on the choices of the authorities of the Bank. The choice if given to the authorities in the absence of transparency and definite procedure for equal opportunity will lead to corruption, favouritism and nepotism. The Lawyers, who have god fathers are capable of soliciting the competent authorities and they alone would get opportunity for empanelment in the Banks. Such a situation now prevailing is not only unconstitutional but infringing the Fundamental Rights of the citizen, who all are the legal practitioners.

28. Right to be considered for appointment / empanelment in a Bank is a Fundamental Right of a citizen. Large number of eligible lawyers are aspiring and longing to secure an opportunity and their basic right cannot be denied. Thus, the prevailing procedures are depriving the rightful candidates to participate in the process of empanelment of Lawyers in the Nationalised Banks and Public Sector Banks.

29. When large number of litigations are being conducted by the Nationalised Banks and Public Sector Banks, empanelment are expected to be done by selecting Competent Lawyers and by providing due opportunity to the SC/ST/OBC candidates. The procedures now being adopted paves way for empanelment of the Lawyers at the whims and fancies of the Competent Authorities of the Banks. Undoubtedly, the situation would lead to corrupt practices, favouritism and nepotism, which is Unconstitutional.

30. It is well settled that not only the Government, but all public bodies are trustees of the power vested in them and custodians of the public interest. Discharge of that trust in the best possible manner is the primary duty of those in charge of the affairs of the State or public body. This

necessarily implies that the nature of functions and duties including the power to engage, employ or recruit servants, agents, advisors and representatives must be exercised in a fair, reasonable, non-discriminatory and objective manner. It is also fairly well settled that duty to act fairly and reasonable is a facet of 'Rule of Law' in a Constitutional democracy like our Great Nation. A long time of decisions of this Court over the past five decades or so have rules that arbitrariness has no places in a polity governed by rule of law and that Article 14 of the Constitution of India strikes at arbitrariness in every State action.

31. The Apex Court in *E.P.Royappa Vs. State of Tamil Nadu* reported in *[(1974) 4 SCC 3]*, declared that Article 14 is the genus while Article 16 is a specie and the basic principle which informs both these Articles are equality and inhibition against discrimination. Thus, violating of Article 14 and if it affects any matter of public employment it is also violating of Article 16. Therefore, Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and inequality of treatment.

32. In the case of *Maneka Gandhi Vs. Union of India* reported in *[(1978) 2 SCR 621]*, the Apex Court held that the principle of reasonableness both legally and philosophically is an essential element of equality and that non-arbitrariness pervades Article 14 with brooding omnipresence. This implies that wherever there is arbitrariness in State action whether, it be legislative or executive Article 14 would spring into action and strike the same down.

33. In the case of *Ramana Shetty Vs. International Airport Authority* reported in *[1979 AIR (SC) 1628]*, the Hon'ble Supreme Court of India relying upon the pronouncements of *E.P.Royappa* and *Menaks Gandhi* cases (cited *supra*) once again declared that State action must not be guided by extraneous or irrelevant considerations because that would be denial of equality. The Apex Court recognised the principles of reasonableness and rationality are legally as well as philosophically essential elements of equality and non-arbitrariness as projected by Article 14, whether it be authority of law or exercise of executive power without the making of a law. It is held that State cannot act arbitrarily in the matter entering into relationships be it contractual or otherwise with a third party

and its action must conform to some standard or norm, which is in itself rational and non-discriminatory.

34. In the case of *D.S.Nakra Vs. Union of India* reported in [1983 (1) SCC 305], the Constitutional Bench of the Supreme Court of India reviewed the earlier pronouncements and while affirming and explaining the same held that it must now be taken to be settled that what Article 14 strikes at is arbitrariness and that any action that is arbitrary must necessarily involve negation of equality.

35. In the case of *Dwarkanaras Marfatia Vs. Board of Trustees of the Port of Bombay* reported in [1989 (3) SCC 293], the Apex Court had an occasion to examine whether Article 14 had any application to contractual matters. The Apex Court declared that every action of the State or an instrumentality of the State must be informed by reason and actions that are not so informed can be questioned under Article 226 and 32 of the Constitution.

36. Subsequent decisions of Apex Court in *Som Raj and Others Vs. State of Haryana and Others* reported in [(1990) 2 SCC 653], *Neelima Misra Cs. Harinder Kaur Paintal and Others* reported in [(1990) 2 SCC 746] and *Sharma Transport Vs. Government of Andhra Pradesh and Others* reported in [(2002) 2 SCC 188], have followed, reiterated and applied the principles settled by the pronouncements in the earlier mentioned cases.

37. In the case of *Shrilekha Vidyarthi Vs. State of Uttar Pradesh* reported in [1991 (1) SCC 212], which happens to be the first of these decisions, the Apex Court had an occasion to examine whether the Government Counsel in the Districts are holders of an ‘office or post’ or such appointments are no more than professional engagements like the one between a private client and his lawyer. That case arose out of a challenge mounted by the Government Counsel who were engaged throughout the State of Uttar Pradesh to handle civil, revenue or criminal cases and whose services were en masse terminated by the State only to be replaced by fresh appointments on the basis of a new panel prepared for that purpose and communicated to the District Magistrates concerned. On behalf of the State,

it was argued that the engagement of Government Counsel was nothing but a professional engagement between a client and his lawyer with no public element attached to it.

38. Relying upon the decisions of this Court in Ramana Dayaram Shetty Vs. International Airport Authority of India [1979] 3 SCC 489, Kasturi Lal Lakshmi Reddy Vs. State of Jammu and Kashmir [(1980) 4 SCC 1], Dwarkadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay [(1989) 3 SCC 293] and Mahabir Auto Stores and Others Vs. Indian Oil Corporation and Others [(1990) 3 SCC 752], the Apex Court held that the power of judicial review and the sweep of Article 14 was wide enough to take within its fold the impugned circular issued by the State in exercise of its executive powers irrespective of the precise nature of appointment of the Government Counsel in the districts or the rights, contractual or statutory, which the appointees may have. This Court reiterated the well settled principles that State action can survive only if it does not suffer from the vice arbitrariness which is the very essence of Article 14 of the Constitution and Rules of law. The Apex Court observed:

“It is now too well-settled that every State

action, in order to survive, must not be susceptible to the vice of arbitrariness which is the crux of Article 14 of the Constitution and basic to the rule of law, the system which governs us. Arbitrariness is the very negation of the rule of law. Satisfaction of this basic test in every State action is sine qua non to its validity and in this respect, the State cannot claim comparison with a private individual even in the field of contract. This distinction between the State and a private individual in the field of contract has to be borne in the mind.”

39. In view of the principles laid down by the Apex Court of India, in the line of cases (cited *supra*), it is necessary for the Nationalised Banks and Public Sector Banks to reform their system of selection and empanelment of Lawyers to the Banks for conducting litigations, to give legal opinion and to deal with the legal matters to make the empanelment more transparent, fair and objective. Necessary procedures shall be brought or in the availability of procedures required amendments are to be made so as to ensure equal opportunity for all eligible Lawyers to participate in the process of empanelment, which is their Fundamental Right ensured under the

Constitution of India. Right to participate in the selection process is the Fundamental Right of a citizen. Thus, the respondents / Banks are bound to review and reform their system of selection and empanelment of Lawyers either for contractual engagement, permanent engagement or otherwise. However, special engagements for a particular case for engaging designated Senior Counsel or expert counsel may be done by exercise of discretion of the Competent Authorities in the public interest and to protect the interest of the Banks. Such special appointments may be made without reference to the procedures for empanelment of Lawyers for conducting litigations on regular basis.

40. The prevailing procedures being adopted by the Banks for empanelment of Lawyers are not in consonance with the established principles to be followed for appointments / empanelments. Procedures and method of selections and merit assessments are to be made and the guidelines or procedures should contemplate the same for empaneling Lawyers. It is needless to state that adequate representations to be provided to SC/ST/OBC candidates without compromising the merits. Thus, the procedures to be adopted must be transparent and must provide equal

opportunity without compromising the merits and the interest of the Bank.

41. In the context of the revised procedures to be formulated, the respondents / Nationalised Banks and Public Sector Banks are at liberty to collect materials from various Public Organisations / Central Government / State Governments and also the established principles settled by the Constitutional Courts across the country and thereafter, finalise the procedures / guidelines to be adopted and publish the same, enabling all the eligible Lawyers to participate in the process of empanelment in Banks.

42. Public notification, inviting applications from the eligible Lawyers is the primary procedure to be followed and it is the basic element of equal opportunity to be provided to all eligible Lawyers. Further procedures are to be contemplated, which must ensure transparency, merit assessment etc., to provide equal opportunity.

43. In view of the facts and circumstances, the respondents 7 to 34 herein are directed to review the existing procedure of their respective Banks for empanelment of Lawyers and suitably alter / amend / frame new

rules / procedures in consonance and in compliance with the Constitutional mandates and based on the established principles to be adopted for appointment / empanelment. The said exercise is directed to be completed within a period of four (4) months from the date of receipt of a copy of this order.

44. The respondents 7 to 34 are directed to submit their compliance report to the Registrar (Judicial), Madras High Court, who in turn, is directed to list the matter “For Reporting Compliance” before this Court on 01.08.2023.

45. With the above directions, the Writ Petition stands disposed of.

No costs.

31.03.2023

Jeni

Index : Yes/No

Speaking order/Non-Speaking order

Neutral Citation : Yes/No

Note: Registry is directed to list the matter before this Court on 01.08.2023 under the caption “For Reporting Compliance”.

To

- 1.The Secretary to Government,
Government of India
Ministry of Finance
Department of Economic Affairs
North Block, Central Sectt.
New Delhi – 110 001.
- 2.The Secretary to Government,
Government of India
Ministry of Home Affairs
North Block, Central Sectt.
New Delhi – 110 001.
- 3.The General Manager,
Department of Banking Operations and Development
Reserve Bank of India,
Central Office, 12th Floor,
Shahid Bhagat Singh Marg,
Fort, Mumbai – 400 001.
- 4.The Chairman,
National Commission for Scheduled Castes,
B wing, 5th Floor, Lok Nayak Bhavan,
New Delhi – 110 003.
- 5.The Chairman,
National Commission for Scheduled Tribes,
B wing, 6th Floor, Lok Nayak Bhavan,
New Delhi – 110 003.
- 6.The Director,
National Commission for schedule Castes,
Floor – 2, Block – 5,
Shastri Bhavan, Chennai 600 006.

W.P.No.13832 of 2013

S.M.SUBRAMANIAM, J.

Jeni

W.P.No.13832 of 2013

31.03.2023