

W.P(MD)No.8172 of 2008

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.02.2020

CORAM:

THE HONOURABLE MR. A.P.SAHI, CHIEF JUSTICE

AND

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.(MD)No.8172 of 2008

and

M.P.(MD)No.1 of 2008

Mallika

: Petitioner

Vs.

1.Union of India
Represented by its
Secretary to Government
Ministry of Law,
New Delhi.

2.The State of Tamil Nadu
represented by its
Secretary to Government,
Home Department,
Chennai – 600 009.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of declaration to declare the term "Senior" as found in Rule 4(5) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 as null and void and unworkable as per the object of the special enactment namely, the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.

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For Petitioner : Mr.C.K.Chandrasekar
For Respondent No.1 : Mr.P.Paulpandi
For Respondent No.2 : Mr.V.R.Shanmuganathan
Special Government Pleader

ORDER

[Order of the Court was made by
The Hon'ble Chief Justice]

The writ petition raises a question of vital importance pertaining to legal assistance being provided in a matter arising out of the Prevention of Atrocities of Scheduled Caste and Scheduled Tribe as to the level of competence of a lawyer to be engaged for conducting a case on behalf of the prosecution so as to protect, not only the sanctity of the procedure, but also to ensure that justice is ultimately meted out to the victim. It is in this background and keeping in view the provisions that are involved and are called upon for interpretation in the present proceedings, that have impelled us to entertain this petition. In spite of a considerable lapse of time and realising the importance of the issue, we had passed the following order on 24.02.2020:

"We have heard learned counsel for petitioner and learned counsel for Union of India as well as the State of Tamil Nadu.

2. This matter, even though ought to have been taken up much earlier, having been filed in the year 2008, and it

ought to have received an immediate attention keeping in view not only the nature of the incident involved but the sufficiency of the law to assist in such cases, we do not find the issue to have been concluded by lapse of time or by the mere fact that the victim has already lost her life and the trial has ended in acquittal.

3. The issue might appear to be academic, but it is more of a necessity for us to pronounce on the subject matter in order to ensure that the competent authorities under the relevant Act and Rules exercise judicious discretion for appointing eminent Senior Advocates as envisaged under the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Rules, 1995.

4. The issue cropped up on account of the incident that has given rise to this writ petition, where, on account of a lack of assessment for pursuing a case through a competent lawyer has led to a complete debacle of the prosecution in spite of the fact that the offence committed was not only gruesome, but one of grievous of its kind as can be penalized under the present criminal justice system, including the Indian Penal Code.

5. On behalf of the petitioner, it is contended that the victim has been conferred with a statutory right to pursue a criminal prosecution through a lawyer/Advocate of his/her choice and it is engrained in Rule 4 of the 1995 Rules, especially framed for cases arising out of the

Scheduled Caste/Scheduled Tribe Atrocities Act. In view of the special nature of protection given to a victim under the aforesaid Act and the Rules framed thereunder, it is urged that the rights of the victim have been protected to the extent of making a provision of engaging, not appointing, a Senior Advocate of eminence. The choice has to be made from a panel to be prepared by the State Government on the recommendations of the District Magistrate or even otherwise by the District Magistrate, as provided for under Rule 4, which is extracted hereunder for ready reference:

"4. Supervision of prosecution and submission of report:

*(1) The State Government on the recommendation of the District Magistrate shall prepare for each District a panel of such number of **eminent senior advocates** who have been in practice for not less than seven years, as it may deem necessary for conducting cases in the Special Courts and Exclusive Special Courts.*

(1A) The State Government in consultation with the Director Prosecution or in charge of the prosecution, shall also specify a panel of such number of Public Prosecutors and Exclusive Special Public Prosecutors, as

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it may deem necessary for conducting cases in the Special Courts and Exclusive Special Courts, as the case may be,

(1B) Both the panels referred to in sub-rule (1) and sub-rule (1A) shall be notified in the Official Gazette of the State and shall remain in force for a period of three years.

(2) The District Magistrate and the Director of Prosecution/in-charge of the prosecution shall review at least twice in a calendar year, in the month of January and July, the performance of [Special Public Prosecutors and Exclusive Special Public Prosecutors] so specified or appointed and submit a report to the State Government.

(3) If the State Government is satisfied or has reason to believe that [a Special Public Prosecutor or an Exclusive Special Public Prosecutor] so appointed or specified has not conducted the case to the best of his ability and with due care and caution, his name may be, for reasons to be recorded in writing, de-notified.

(4) The District Magistrate and the officer-in-charge of the prosecution at the District level, shall review;-

(a) the position of cases registered under the Act;

(b) the implementation of the rights of victims and witnesses, specified under the provisions of Chapter IVA of the Act, and submit a monthly report on or before 20th day of each subsequent month to the Director of Prosecution and the State Government, which shall specify the actions taken or proposed to be taken in respect of investigation and prosecution of each case.

(5) Notwithstanding anything contained in sub-rule (1), the District Magistrate or the Sub-Divisional Magistrate may, if deem necessary or if so desired by the victims of atrocity, **engage an eminent Senior Advocate for [conducting cases in the Special Courts or Exclusive Special Courts]** on such payment of fee as he may consider appropriate.

(6) Payment of fee to the [Special Public

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Prosecutor and Exclusive Special Public Prosecutor] shall be fixed by the State Government on a scale higher than the other panel advocates in the State.”

6. *It is the case of the petitioner that the Rule being unguided the prescription of ten years practice in itself would not suffice so as to constitute eminence of a lawyer and rather the word "eminence" should be defined by guidelines that may be prescribed by this Court or the State Government may be directed to make out a prescription not only keeping in view just the years of practice, but the actual and effective practice of a lawyer so as to elevate him to the status of eminence befitting his accomplishments.*

7. *The question to be answered is as to what could be the possible parameters of eminence for a lawyer to be empaneled as a lawyer of eminence and a Senior Advocate under the 1995 Rules read with the Criminal Procedure Code thereby complying with the provisions and also satisfy the need of the victim.*

8. *Needless to say that one has to keep in mind that the definition of the phrase "Senior Advocate" as used in the Indian Advocates Act, 1961 may not be a necessary guideline for the purpose, keeping in view the special purpose for which the Acts and Rules have been framed.*

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9. *Learned counsel are requested to assist this Court with materials on this issue coupled with the case laws that may throw light on the issue.*

10. Put up by **25.02.2020.**"

2. We have heard learned counsel for the respective parties including the learned counsel for the State.

3. We find from the record that interim directions were issued, keeping in view the question raised and the urgency of the situation, on 10.09.2008. The order passed by the learned Single Judge is extracted hereinunder:

"In view of the urgency of the case pleaded by the petitioner, the following interim-direction is granted pending the writ petition.

2. The main writ petition challenges Rule 4 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995, which enable the District Magistrate to prepare a District wise panel of "**Eminent Senior Advocates**" who have been in practice for not less than seven years for conducting cases before the Special Courts. The panel has to be notified in the Official Gazette and will remain in force for a period of three years.

3. The question now posed in the writ petition is the use of term "Eminent Senior Advocate" found under the Rules. Under Section 16 of the Advocates Act, 1961, a Senior Advocate has to be designated by the High court it is in its opinion that by virtue of his ability standing at the Bar or special knowledge or experience in law he is deserved such distinction. This High Court had framed guidelines for designating Senior Advocates. One such guideline is that they must have for minimum 15 years. If the terms Senior found in Rule 4 is to be accepted then the question of Senior Advocate being available in district may not arise, since most of the Senior Advocates are practicing before the Principal Seat or before this Madurai Bench. Even otherwise, the requirements found in Rule 4 is that the advocate to be in the panel must have practice for not less than seven years. Obviously, the term Senior Advocates found in the Rule may not have relevance to Section 16(2) of the Advocates Act, 1961.

4. Under such circumstances, pending further orders in the main writ petition, a direction will issue to the respondent to accept the panel of Advocates who may not be designated Senior Advocates in terms of Section 16(2). But the term Senior relates to number of years of practice.

5. The term eminent which the learned District Magistrate will have to keep in mind while preparing the panel of lawyers' of having practice not less than 7 year. The term

eminent is defined in Oxford English Dictionary which is as follows:

"Eminent:1. respected and distinguished within a particular sphere.

2. notable, outstanding etc.,

6. However, the word "eminent" is also susceptible for different interpretations. For avoiding any such arbitrary selection by the District Magistrates it is necessary that the District Magistrate concerned must write a letter to the learned Principal District and Sessions Judge of the concerned district seeking for names of such eminent lawyers practicing before the District Courts. Thereafter going by the different names, forwarded by the District and Sessions Judge prepare a panel under Rule 4 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995. This order shall be complied with until further orders.

7. A copy of this order may be circulated to all the District Magistrates (District Collectors) in Tamil Nadu for reference.

8. Post the contempt application along with WP.No.8172 of 2008."

4. It appears that since an issue relating to a stated conflict had been pleaded *vis-a-vis* Rule 4(5) of the Scheduled Caste and Scheduled

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Tribe (Prevention of Atrocities) Rules 1995 (hereinafter referred to as 'the 1995 Rules') and Section 16 of the Advocates Act 1961 (hereinafter referred to as '1961 Act') that the matter had to be placed before a Division Bench, as the prayer made appears to be for reading down the aforesaid Rule 4(5) of the 1995 Rules by holding it not to be a synonym of the phrase "Senior Advocate" as used in the 1961 Act. The petition has travelled almost 12 years and today, the parties have advanced their submissions covering the various aspects of the provisions that have been placed before us for interpretation.

5. Section 16 of the Advocates Act 1961 is gainfully reproduced for ready reference keeping in view the issue raised:

*"16. **Senior and other Advocates** – (1) there shall be two classes of advocates, namely, senior advocates and other advocates.*

*(2) An advocate may, with his consent, be designated as senior advocate if the **Supreme Court or a High Court is of opinion that by virtue of his ability [standing at the Bar or special knowledge or experience in law] he is deserving of such distinction.***

(3) Senior advocates shall, in the matter of their practice, be subject to such restrictions as the Bar Council of India may, in the interest of the legal profession, prescribe.

(4) An advocate of the Supreme Court who was a senior advocate of that Court immediately before the appointed

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*day shall, for the purposes of this section, be deemed to be a senior advocate;
provided that where any such senior advocate makes an application before the 31st December, 1965 to the Bar Council maintaining the roll in which his name has been entered that he does not desire to continue as a senior advocate, the Bar council may grant the application and the roll shall be altered accordingly."*

6. At the very outset, we may sort out the doubt, which has been raised about the stated conflict arising from a reading of the aforesaid provisions.

7. The Advocates Act, 1961 classifies Advocates in two tiers, namely, Advocates as defined therein and by providing a conferment of honour and privilege on such Advocates, who on account of their accomplishments and distinction can be designated as Senior Advocates in terms of Section 16 thereof. The Supreme Court and the High Courts have been authorised to extend such conferment. In view of the recent decision of the Apex Court in the case of **Indira Jaising vs. Supreme Court of India and others, [(2017) 9 SCC 766]** and the decision in the case of **State of Punjab v. Brijeshwar Singh Chahal, [(2016) 6 SCC 1]**, almost all the High Courts throughout the Country have already framed rules laying down extensive guidelines keeping in view the income

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of a Lawyer, his long-standing practice, his expertise and his contribution to law to be taken as some of the parameters for designating an Advocate as a Senior Advocate. The aforesaid procedure is therefore a general law that has been enacted for the purpose of designating an advocate as a Senior Advocate giving him the privilege and at the same time, recognizing his distinction amongst the legal fraternity keeping in view his standing at the Bar and contribution to law. The purpose therefore is clearly to recognize the talents and the expertise of any lawyer for the purpose of a special recommendation amongst the legal fraternity for being designated as a Senior Advocate. The Advocates Act nowhere confers a privilege of engagement of Senior Advocates for any particular purpose either cases or classes of cases or for any other professional engagement. The choice of the litigant does not therefore, in any way is a consideration for the conferment of any privilege or honour and has no correlation with the designation as a Senior Advocate under the Advocates Act. It is a recognition of the outstanding personality of a member of the legal profession that allows the High Court to confer the designation of a Senior Advocate on a lawyer.

8. It would be apt to quote some paragraphs of the Apex Court decision in the case of **State of Punjab v. Brijeshwar Singh Chahal** (supra), where the Apex Court taking into account the quality of

assistance required, but not rendered, was considered and proper indicators were given for carrying out a realistic assessment for empanelment of State Government Lawyers. The relevant paragraphs of the said judgment are extracted herein under:

"8. A realistic assessment of the requirement is the first and foremost step that one would expect the State to take for any prudent exercise of the power of appointment of Law Officers. No such assessment has been made nor any material disclosed by the State Governments to demonstrate that they were sensitive to the need for any such assessment. Power to appoint Law Officers was all the same exercised on what appears to us to be a totally ad hoc basis without any co-relation between the workload in the courts and the number of Law Officers appointed to handle the same. There is no gainsaying that if the power to appoint is exercised not because such exercise is called for but because of some extraneous or other reason the legitimacy of the exercise will itself become questionable.

.....

10. We are not sure whether a similar study has been conducted qua the State of Punjab, but given the fact that the number of Law Officers appointed by that State is also fairly large, we will not be surprised if any such study would lead to similar or even more startling results. **The upshot of the above discussion is that for a fair and objective system of appointment, there ought to be a fair and realistic assessment of the requirement,**

for otherwise the appointments may be made not because they are required but because they come handy for political aggrandisement, appeasement or personal benevolence of those in power towards those appointed. The dangers of such an uncanalised and unregulated system of appointment, it is evident, are multi-dimensional resulting in erosion of the rule of law, public faith in the fairness of the system and injury to public interest and administration of justice. It is high time to call a halt to this process lest even the right thinking become cynical about our capacity to correct what needs to be corrected.

....

40. **Our system of administration of justice is so modelled that the ability of the lawyers appearing in the cause to present the cases of their respective clients assumes considerable importance. Poor assistance at the Bar by counsel who are either not sufficiently equipped in scholarship, experience or commitment is bound to adversely affect the task of administration of justice by the Court. Apart from adversely affecting the public interest which State counsel are supposed to protect, poor quality of assistance rendered to the courts by State Counsel can affect the higher value of justice itself.** A fair, reasonable or non-discriminatory process of appointment of State Counsel is not thus demanded only by the Rule of law and its intolerance towards arbitrariness but also by

reason of the compelling need for doing complete justice which the Courts are obliged to do in each and every cause. The States cannot in the discharge of their public duty and power to select and appoint State counsel disregard either the guarantee contained in Article 14 against non-arbitrariness or the duty to protect public interest by picking up the best among those available and willing to work nor can the States by their action frustrate, delay or negate the judicial process of administration of justice which so heavily banks upon the assistance rendered by the members of the Bar.

....

41. To sum up, the following propositions are legally unexceptionable:

41.1. The Government and so also all public bodies are trustees of the power vested in them.

41.2. Discharge of the trust reposed in them in the best possible manner is their primary duty.

41.3. The power to engage, employ or recruit servants, agents, advisors and representatives must like any other power be exercised in a fair, reasonable, non-discriminatory and objective manner.

41.4. The duty to act in a fair, reasonable, non-discriminatory and objective manner is a facet of the Rule of Law in a constitutional democracy like ours.

41.5. An action that is arbitrary has no place in a polity governed by Rule of Law apart from being offensive to the equality Clause guaranteed by Article 14 of the Constitution of India.

41.6. **Appointment of Government counsel at the district level and equally so at the High Court level, is not just a professional engagement, but such appointments have a "public element" attached to them.**

41.7. **Appointment of Government Counsel must like the discharge of any other function by the Government and public bodies, be only in public interest unaffected by any political or other extraneous considerations.**

41.8. **The government and public bodies are under an obligation to engage the most competent of the lawyers to represent them in the Courts for it is only when those appointed are professionally competent that public interest can be protected in the Courts.**

41.9. **The Government and public bodies are free to choose the method for selecting the best lawyers but any such selection and appointment process must demonstrate that a search for the meritorious**

was undertaken and that the process was unaffected by any extraneous considerations.

41.10. No lawyer has a right to be appointed as a State/Government counsel or as Public Prosecutor at any level, nor is there any vested right to claim an extension in the term for which he/she is initially appointed. But all such candidates can offer themselves for appointment, re-appointment or extension in which event their claims can and ought to be considered on their merit, uninfluenced by any political or other extraneous considerations.

41.11. Appointments made in an arbitrary fashion, without any transparent method of selection or for political considerations will be amenable to judicial review and liable to be quashed.

41.12. Judicial review of any such appointments will, however, be limited to examining whether the process is affected by any illegality, irregularity or perversity/irrationality. The Court exercising the power of judicial review will not sit in appeal to reassess the merit of the candidates, so long as the method of appointment adopted by the competent authority does not suffer from any infirmity”

9. With the aforesaid background, we may now examine the

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purpose of the engagement of an Advocate, who may be senior and at the same time may be also eminent for the purpose of conducting a criminal trial in order to protect the interest of a victim and to ensure the certainty of a prosecution case in the criminal justice delivery system. This is in order to ensure faith in a particular class of citizens, namely, that of Scheduled Caste and Scheduled Tribe, who may feel protected enough in law to have the privilege of engaging a Senior and an eminent lawyer for preserving vital interests, which is otherwise unaffordable for them and may also be a necessary requirement in view of the intricacies of a case involving the gravity of the offence. The purpose of engagement, therefore, is to ensure an easily accessible legal aid service available to an ordinary victim belonging to the Scheduled Caste or Scheduled Tribe category for properly and effectively conducting a criminal trial.

10. Thus the words "eminent Senior Advocate" occurring in Rule 4(5) of the 1995 Rules, in our considered opinion, is not a synonym of the definition of a Senior Advocate as contained in the Advocates Act 1961. A Lawyer having ample years of practice with a substantial expertise in the field of criminal law can be considered to be eminent even if he is not a designated Senior Advocate under the 1961 Act. The purpose therefore, is to make available the best of the legal brain that can be easily made available for the purpose of conducting a trial of a special nature as per

the provisions of the 1995 Rules.

11. In order to understand this distinction, we have to necessarily indicate that the judgments, which have been cited at the Bar do not appear to have travelled in the realm of defining the words 'eminent Senior Advocate' as envisaged under Rule 4(5) of the 1995 Rules. These decisions have either been concerned with the power of the District Magistrate to make available the service of such an Advocate and a compulsion or a choice to be exercised by the District Magistrate on the asking of either a victim or otherwise required by the situation depending upon the facts of each case.

12. To briefly analyse the same, we may refer to the decision of the Division Bench of the Rajasthan High Court in the case of **Smt. Sakti Devi and another etc. v. Tika Singh and others, [(2006) Cri LJ 4721]**. The aforesaid decision clarifies that keeping in view the provision of Section 24 read with Section 301 of the Criminal Procedure Code and the provisions under the 1995 Rules, the engagement of a Senior Advocate is not an appointment at par with the Special Public Prosecutor. Paragraph 16 of the judgment notices the said arguments and thereafter in Paragraph 19 to 23, the Division Bench came to a conclusion that the terminology used in Rule 4(1) is engagement, which carries a different

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meaning apart from the word appointment as used in the Criminal Procedure Code. It was also held that 1995 Rules having been framed under the said Statute for specific purpose of providing relief to victims of atrocities in the matter of trial of offences covered by the Scheduled Caste/Scheduled Tribes Act confers a right on the victim, who can have his/her case conducted by an Advocate of his/her choice so as to secure faith and confidence of the victim in the justice delivery system.

13. The next case is that of the Madras High Court in ***Dhamayanthi v. Muruganantham, 2011 (2) MLJ (Crl) 22***, where, in Paragraph No.9, it has been observed that the District Magistrate is the competent authority to engage an Advocate for conducting cases in Special Courts on payment of fee and accordingly, a direction was issued therein to the District Magistrate to engage an Advocate as desired by the victim. This became a matter of discussion by a learned Single Judge of the Madras High Court in the case of ***R.Kandasamy v. District Collector, Salem District, (2013) 4 MLJ (Crl) 339***, where also, the entire scheme of the 1995 Rules was discussed and the view taken by the Rajasthan High Court Division Bench was almost reiterated, for which, reference may be had to paragraph Nos.20 to 29 of the aforesaid judgment.

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14. Another argument had been raised therein about a conflict arising between the appointment of a Special Public Prosecutor under Section 15 of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act and Rules 4(5) of the 1995 Rules. This was dispelled and it was held that Sub Rule (5) of Rule 4 of the 1995 Rules is an independent rule and the District Magistrate engages an Advocate of eminence as a Senior Advocate of eminence to replace the Public Prosecutor and get the case conducted through him as per the choice of the victim. Therefore, there is absolutely no conflict between Section 16 of the 1961 Act and Rule 4(5) of the 1995 Rules.

15. In another judgment of the Madras High Court in the case of **S.Veeralakshmi v. District Collector cum District Magistrate and others, 2018 Supreme (Madras) 706**, it was observed that if a victim of any such offence wishes that an eminent Senior Advocate has to conduct the case, then, the District Magistrate has to engage such an Advocate to conduct the prosecution in the special Court and he cannot reject such a request of a victim of the said category. This was also followed in the case of **Parvathi v. District Collector, Trichy, 2018 Supreme (Mad) 3418**. The decision of the Delhi High Court in the case of **Sunil Grover v. Government of NCT of Delhi and others, (2019) 1 Crimes (HC) 686**, however, held to the contrary and observed that the

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victim can request the appointment of an eminent Senior Advocate, but no insistence could be made for that purpose and the decision to engage a Senior Advocate of eminence would rest with the District Magistrate. Paragraph Nos.18 to 21 of the judgment indicates the same.

16. The latest judgment that we could lay our hands and as cited at the Bar is that of the Division Bench in the case of **P.K.Illavarasan and another v. Union of India, 2019 Supreme (Mad) 1097**. The Division Bench proceeded to resolve the conflict as to whether the word 'may' and 'shall' as used in Rule 4 at two places make it mandatory or otherwise leave it discretionary in the hands of the District Magistrate to engage a Senior Advocate of eminence at the choice of the victim. After having dealt with the provisions, the Division Bench in Paragraph Nos.37 to 39 held as follows:

"37. Reading of the object of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 shows that the Act is meant to protect the interest of the SC/ST who are vulnerable section of the Society. The Magistrate on the mere asking cannot appoint the Prosecutor of the choice of the victim. It is possible that a victim could be pressurised by the tormentors to ask for a Prosecutor to the advantage of the tormentors themselves. In such circumstances, it cannot be said that the District Magistrate is powerless to accept the choice of the victim. The word 'may' cannot be interpreted as

'shall'. In any event it is a well settled principle of interpretation that the plain meaning of the word occurring in the section must be given by the Court and the Court would substitute the meaning or change the word, only in such cases, where the ordinary meaning, if given would result in absurd consequences.

38. The inference as to how the words 'may' and 'shall' has to be interpreted depends upon the object, design, purpose and scope of the legislation. It has to be done case to case. It is not a invariable rule that though the word used in the legislation is 'may', it is directory, it should be termed as 'shall' which is ordinarily mandatory. Where the consequence of failure to comply with any requirement of a provision is provided in the statute itself, the consequences has to be determined with the nature of the provision, the purpose of enactment and the effect of non compliance thereof. In the absence of any provision, the consequences have to be determined with reference to the effect of non compliance of the Act.

39. It cannot be held that in every case, when an application for change of the Prosecutor is made by the victim, the Magistrate is duty bound to accept. It is for the Magistrate to ascertain as to whether the request for appointment of the Prosecutor by the victim is genuine. Whether the Prosecutor who is already conducting the case, is not conducting the case properly and only then, come to a conclusion of his own that whether such a

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request of the victim should be accepted or not, keeping in mind the object of the legislation.”

17. It is thus clear that the Division Bench came to the conclusion that the word 'may' cannot be interpreted in all situations as 'shall' so as to render the District Magistrate powerless from exercising his discretion, while proceeding to accept or otherwise take a decision in relation to a request made by a victim for appointing a Senior Advocate of eminence.

18. Having considered the aforesaid decisions and having gone through the ratios thereof, the position that emerges is that a Senior Advocate of eminence can be appointed by a District Magistrate and upon his engagement, such an Advocate shall take over the entire process of the trial to the extent of exclusion of the Public Prosecutor and would be the absolute in-charge of the litigation till its culmination. Engagement therefore supervenes and brings into existence a Lawyer engaged on behalf of the State to lead the prosecution and to conduct it, keeping in view the fact that he had been engaged as Senior Advocate of eminence.

19. The discretion of the District Magistrate as explained above therefore, has to be understood in the light of the above factors and we

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also find ourselves in complete agreement with the view expressed by the Division Bench in the case of **P.K.Illavarasan (supra)**.

20. The question, which has cropped up now remains to be answered namely as to who would be that Senior Advocate of "eminence" and his availability, more particularly, in the Subordinate Courts for conducting the prosecution keeping in view the grave nature of the offences and the consequences thereof in order to ensure that justice is meted out in cases arising out of the special provisions of the Scheduled Caste and Scheduled Tribes Act and the Rules framed thereunder. For this, we have to take recourse to the ordinary meaning of the word 'eminence', as it has not been defined in the 1995 Rules. To aid the understanding of the word 'eminence', we may adopt the dictionary meaning that has been explained in various Dictionaries. We could lay our hands on Oxford Dictionary (23 Volumes) edited by Sir John Murray. The said Dictionary defines that a person or object would be considered eminent if the same is towering above other surrounding persons or objects. It is exalted, dignified in rank or station that makes a person eminent on account of his distinguished characters or attainments by success in the profession or in any walk of life. The characteristics reflect qualities that are remarkable in degree and are conspicuously perceptible. They are signal in nature and noteworthy, giving importance to the

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personality of the person possessed all such characteristics. This transformed personality projects eminence in Society and portrays a degree of elevation with distinguished superiority compared to others. Such recognition and reputation is an outcome of intellectual and moral attainment or the possession of such qualities in sum and substance, it is a recognition of excellence and a matter of distinction acknowledging the superiority of the individual in his profession or calling of duty.

21. The issue had also cropped up that came to be considered in a matter arising out of extending the benefits of reservation for admission in the sports category, where a Division Bench of the Madras High Court had the occasion to deal with and define the word 'eminence', in the case of **Midhuna Nathan and others v. State of Tamil Nadu and others, AIR 1996 (Madras) 178**. The phrase 'eminent sportsman' had been called on for being defined for the purpose of extending the benefit of reservation for admission in the MBBS course under the sports quota. While dealing with the same in Paragraph No.17, the Court referred to another judgment in the case of **Sabitha v. State of Tamil Nadu** [W.P. No. 9406 of 1983 dated 16.4.1984] and then quoted the observation made in the said case in Paragraph No.17 as follows:

"The word 'eminent' means, rising above others, conspicuous, distinguished. Therefore, it stands to reason that it is not mere sportsmanship, but eminent

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in sportsmanship, that has to be the guiding principle on which the selection is to be made and the touch-stone on which the selection has to be tested. To clear any doubt in the matter, it is also stated in the prospectus that in order to merit consideration as eminent sportsman, a candidate should have participated at State Level and All India level sports. **Since eminence in sports activities cannot be achieved by a flourish of the magic wand or by easy methods, but can be achieved only by long, constant and hardwork** in the sports field or gymnasium, it goes without saying that the candidate will have to sacrifice a good portion of his study time for attaining eminence in sports activities. It is to effect the sacrifice made by the candidate of his academic activities, the Government has deemed it fit to prescribe lesser marks of eligibility for applying for MBBS Course.”

22. Again in the field of academics, we came across another judgment of the Allahabad High Court in **Gorakpur University Aff. College Teacher Asso. and others v. State of U.P. and others, 2015 (9) ADJ 283**, where, the then Hon'ble Chief Justice Dr.D.Y.Chandrachud (as his Lordship then was) dealt with this issue in detail and after referring to the judgment in the case of **Ram Tawakya Singh v. State of Bihar [(2013) 16 SCC 206]**, held in Paragraph No.25 as follows:

“25.The expression 'eminence' has not been defined by the state legislature and must, therefore,

bear its ordinary connotation and meaning. The expression 'eminence' has been defined in the Shorter Oxford English Dictionary to mean "distinguished in character or attainments". The Random House Dictionary of the English language defines the expression 'eminent' to mean "high in station, rank, or repute; distinguished". Webster's New Twentieth Century Dictionary of the English language defines the expression 'eminent' to mean "standing high by comparison with others; renowned; exalted; distinguished". The meaning which is ascribed to the expression 'eminent' in these dictionaries bears a common sense understanding of the expression....."

23. This Division Bench judgment is a further reflection on the manner and mode, in which the eminence of a person, particularly in the field of academics, could be assessed and for that the Division Bench gave indicators in Paragraph Nos.35 and 36 holding that while assessing the eminence of a person, the stage of formulation involves agenda setting and laying down procedural antecedents before leading to the final decision making process. Paragraph Nos.35 and 36 of the said decision are extracted hereinunder:

"35. The procedures which the State adopts in making appointments to posts of members in a statutory commission like the Higher Education Service Commission **must be consistent with the standards and norms of**

fairness, which animate Article 14. Structural fairness in the decision making process leading up to the ultimate appointment of a member of the Commission is a requirement of the guarantee of equality and equal opportunity. These norms must be observed so that **institutional processes meet the need for fair, transparent, objective and accountable governance.** Basically, fair procedure in making appointments to the position of a member in the Commission must involve **four stages:**

- (i) Formulation;**
- (ii) Opportunity;**
- (iii) Decision making; and**
- (iv) Selection.**

36. The stage of formulation involves agenda setting and laying down procedures antecedent to decision making. This has to be laid down in a manner which is consistent with the governing statutory provision. The stage of formulation would among other things cover the manner in which vacancies would be notified so as to be brought to the knowledge of the field of eligible candidates under the statute. **It must involve the constitution of a Committee** or team - consistent with the statute - for processing the nominations or applications received. The stage of formulation may involve the constitution of a Search Committee **which can tap the best candidates.** The stage of formulation also involves setting down **procedures** which will be followed **and time - lines.** The

second stage involving **opportunity** enables interested and eligible persons to respond to the notification so that candidatures across a broad spectrum of sources indicated in the statute are considered. If a Search Committee has been constituted, the Committee will facilitate the process of identifying prospective candidates. **Personnel forming part of the Search Committee must possess knowledge, administrative experience and domain expertise. Members of the selection panel or Search Committee must be subject to rules of exclusion on the ground of bias and conflict of interest. The third stage** of decision making involves the assessment of candidatures on the basis of **applicable statutory norms**. Where appropriate, a procedure of **short listing** may be envisaged where the number of candidates is large. The final stage is the stage of selection. Decision making must be based on **eligibility and suitability as defined by the statute**. There must be documentation of the process at each stage. The material on the basis of which the decision is arrived at **must show an application of mind to the credentials, competence and integrity of candidates**. We have indicated the **broad parameters and guidelines**. The underlying principle is that institutional processes must be well defined, publicised and fair. **That will at least in some measure ensure a movement to a system where competence and merit prevail over patronage, transparency prevails over secrecy and the prevailing culture of cynicism is replaced by accountable and responsive governance which promotes public**

confidence in our institutions.”

24. Hopefully in the present case, the learned single Judge, while passing an interim order, had given an indication that the District Magistrate will have to keep in mind the various factors indicated in the Act itself for deciding as to who would be an eminent lawyer without being influenced by the definition of the word “Senior Advocate” as contained in the Advocates Act, 1961.

25. However, the task has been handed down to us and the learned Special Government Pleader contends that guidelines to the said effect can be made available or the State Government can be directed to formulate appropriate guidelines in order to assess the capacity of a Lawyer to be treated as an eminent Senior Advocate for being placed in the panel as envisaged under Rule 4(1) of the 1995 Rules.

26. As indicated above, guidelines and parameters are required to be formulated by the Government, so that the same can be uniformly applied throughout the State by the District Magistrates and in our opinion, it would be appropriate that the State Government formulates a policy for the purpose of assessing the eminence of a person. Even though a long-standing at the Bar beyond the period of ten years may be

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a necessary benchmark, yet apart from this, the eminence of a Lawyer should be gauged from the point of view from the nature and number of cases handled by him, more particularly, in the field of criminal law, in order to place him in the panel of eminent Senior Advocates. The statute itself prescribes that the Advocate should not be having less than seven years of practice, but at the same time, it deserves to be noted that the Criminal Procedure Code with regard to Special nature of cases under Section 24 prescribes not less than 10 years of practice. In our considered opinion, this would depend upon the gravity of the offence for which an engagement has to be made, inasmuch as it is the gravity of the offence and the nature of evidence, which requires more expertise for handling such nature of litigation which usually unhappily ends in an acquittal. For this, we may add from experience that an Advocate of eminence can be assessed not singularly by the District Magistrate, who, as indicated by the Division Bench of the Allahabad judgment referred to hereinabove, may require an effective consultation in the present case with the Principal District Judge of the District concerned. It may be, therefore, necessary to form a small committee that may suggest and recommend the names of such eminent Lawyers to be chosen by the District Magistrate for being placed in the panel. Care should be taken about the integrity and the ethical standards of the Lawyer as well, which is more important in matters of such crimes to ensure that the advocate is

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otherwise not influenced either way while conducting the trial. The parameters, therefore, have to rest on expert as well as ethical considerations with emphasis on an effective engagement of a Lawyer who is dedicated towards the cause and not merely his professional placement.

27. We cannot issue exhaustive guidelines for the said purpose but the aforesaid recommendations can further be streamlined while laying down parameters to be observed by District Magistrate and for that we direct the State Government to frame appropriate guidelines within a period of one month from today and execute the same for being followed by the respective District Magistrates, while exercising their powers for engaging eminent Senior Advocates for the special purpose of trial under the Scheduled Caste and Scheduled Tribe Act and 1995 Rules.

28. Writ Petition is disposed of with the above. However, there is no order as to costs. Consequently, connected M.P.No.1 of 2008 is closed.

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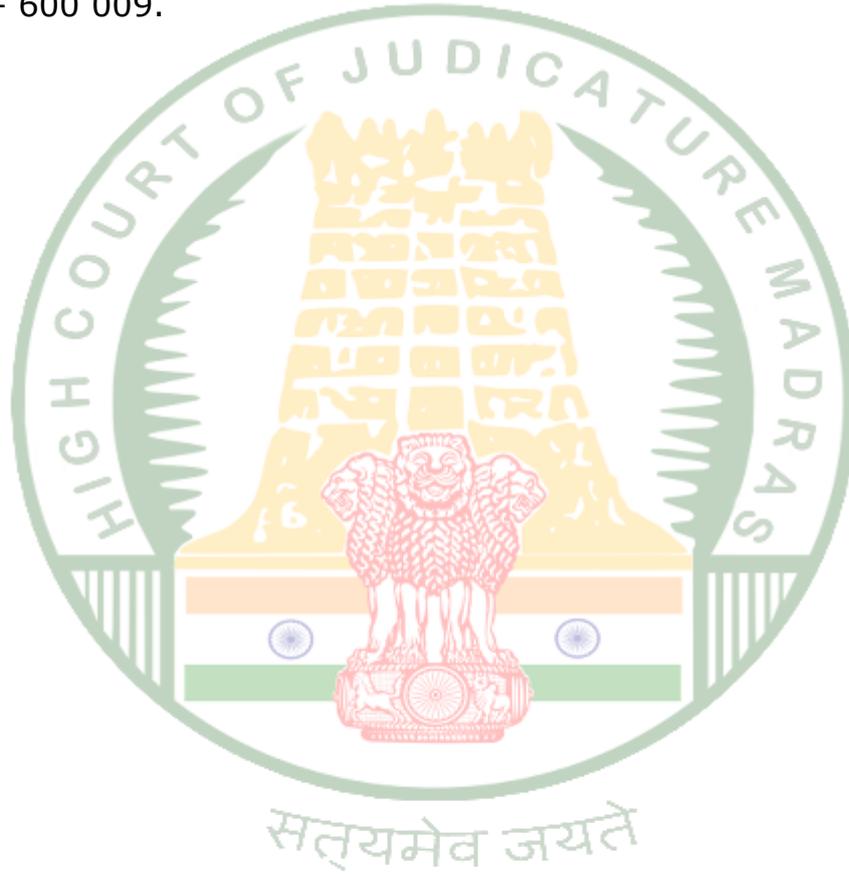
[A.P.S.,CJ.,] [S.P.,J.]

25.02.2020

Index : Yes/No
Internet : Yes
RR/sasi

To

- 1.The Union of India
Secretary to Government
Ministry of Law, New Delhi.
- 2.The State of Tamil Nadu
Secretary to Government,
Home Department,
Chennai – 600 009.

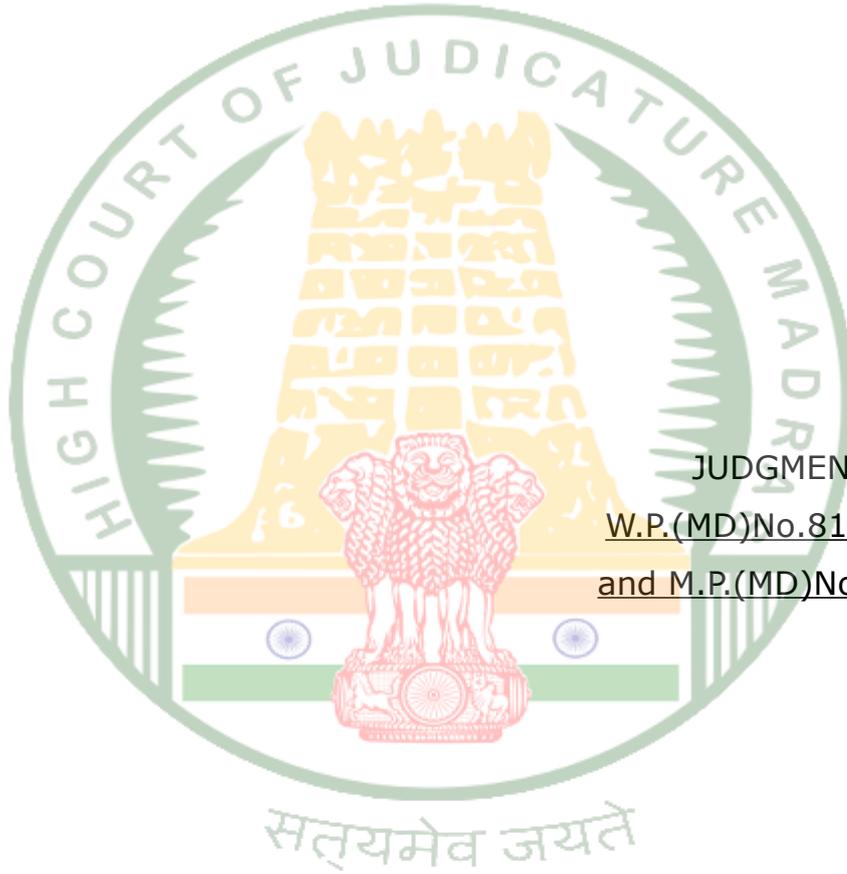


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THE HON'BLE CHIEF JUSTICE
AND
SUBRAMONIUM PRASAD, J.

sasi/RR



JUDGMENT MADE IN
W.P.(MD)No.8172 of 2008
and M.P.(MD)No.1 of 2008

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