

In Chamber

Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 569 of 2020

Petitioner :- In Re - Assistance To The Needy Advocates And Registered Advocate Clerks

Respondent :- State of U.P.

Counsel for Petitioner :- Suo Motu

Counsel for Respondent :- C.S.C.

Hon'ble Govind Mathur,Chief Justice

Hon'ble Siddhartha Varma,J.

Heard this public interest petition through Video Conferencing with seven open windows from 7 different stations, out of that five are at Prayagraj (Allahabad) and one each at New Delhi and Lucknow.

At the threshold, our congratulations and a mark of appreciation for Computerization Committee and Computer Section of the Allahabad High Court.

Noticing deleterious effect of the COVID-19 lockdown on the livelihood of Advocates and registered Advocate Clerks, this Court called upon the Bar Council of India, New Delhi, Bar Council of Uttar Pradesh, State of Uttar Pradesh, Allahabad High Court Bar Association, Allahabad High Court Advocate's Association and Awadh Bar Association, Lucknow to explain the steps taken by them to assist needy Advocates and registered Advocate Clerks.

In response to that, when the case was taken up on 15th April, 2020 through Video Conferencing, learned Advocate General submitted that the Bar Council of India as also the State Bar Councils had sufficient funds to cater to the present circumstances.

Learned Additional Advocate General also submitted that sufficient funds under the Uttar Pradesh Advocates Welfare Fund Act, 1974 were in existence. The State Government had transferred the money that had been collected through the Stamp for the welfare of the Advocates to the

Treasury in the State of Uttar Pradesh.

Learned Additional Advocate General also pointed out certain provisions of the “**Bar Council of India Rules**” for creating a corpus of funds and for their distribution amongst Advocates in the times of need.

Accordingly, we directed the Bar Council of India, New Delhi and Bar Council of Uttar Pradesh to produce before the Court through e-mail the definite procedure by which they have brought into effect the provisions of Rules 44A and 44B of the Bar Council of India Rules contained in Chapter VI.

Today, the petition for writ is again taken up for hearing. All the parties before us are desirous to have some positive direction to extend helping hand to needy members of the legal profession in the State of Uttar Pradesh and also to the registered Advocate Clerks.

Sri Manan Mishra, Chairman, Bar Council of India is before us through Video Conferencing from New Delhi. Sri Mishra, while explaining the scheme of the Advocate's Act, 1961 and the Bar Council of India Rules acquainted us with the funding sources of the apex statutory body of the Advocates. It is informed that the Bar Council of India has decided to provide financial assistance to each and every State Bar Councils in proportion to their strength of Advocates, subject to maximum grant of Rs.1 crore. With all fairness Sri Manan Mishra stated that the amount aforesaid shall be released by the Council at earliest.

Sri Mishra also informed to us that an appeal has also been made by him to Hon'ble the Prime Minister to provide Rs.20,000/- as a minimum subsistence allowance per month to the Advocates, who are not financially well off.

Sri B.K. Srivastava, learned Senior Advocate assisted by Sri Anadi Krishna Narayana, Advocate appearing on behalf of Bar Council of Uttar Pradesh assured us that the State Bar Council would not step behind in providing financial aid to the needy Advocates enrolled with it. However, the Counsels emphasized that under the Uttar Pradesh Advocates Welfare

Fund Act, 1974 much assistance can be given to the members of the fund but the Trustees Committee created under the Act aforesaid has not taken adequate step in this regard.

Sri B.K. Srivastava, learned Senior Advocate has also pointed out several relevant facts with regard the functioning of the Trustees Committee which as per him is not satisfactory. The details so pointed out in the response of the Bar Council of Uttar Pradesh are as follows:-

“10. That upon great persuasion and persistent demand made by Bar Council of Uttar Pradesh, State Government framed Uttar Pradesh Advocate Welfare Fund Act, 1974 hereinafter referred as “welfare Act” for establishment and operation of fund to promote the welfare of the Advocates in Uttar Pradesh. Provisions of section 3 (3) provides that the fund shall vest, held and administered by a trustees committee, consisting of three members, namely Advocate General of Uttar Pradesh as ex-officio member who shall be Chairman and two members of the State Bar Council. Secretary of the State Government in the Judicial Department shall be the Member-Secretary.

11. That, under section 8 of the Act, State Bar Council shall contribute certain amount on commencement of the fund (amendment) ordinance 1986 which has been contributed by the Bar Council of Uttar Pradesh. Under section 9 every advocate is supposed to affix on the vakalatnama, a welfare stamp of the value of rupees 10/- as no court shall receive any vakalatnama unless it is so stamped. Adherence of provisions of section 9 of the welfare act, generates several crore rupees per annum and the said amount collected by the State of Uttar Pradesh through welfare stamp, is transferred to the said welfare fund of which state government is custodian through its Advocate General and Law Secretary.

12. That, it is for the State of Uttar Pradesh to disclose as to what is the actual quantum of fund in the welfare fund under the welfare Act which is meant for the welfare of the Advocates in Uttar Pradesh. Applicant has come to know through reliable sources, subject to correction, that amount in the welfare fund is more than 250 crore with the state government which is advocates money, fixed on their vakalatnamas. This fund was and is in deposit with trustee committee, headed by Advocate general and is only utilized for payments of death claims. About 300 death claims are still pending and widows are running from pillar to post. State Bar Council has no control over welfare fund created under Act, 1974.

13. That in exercise of power u/s 16 of the welfare act, the State of Uttar Pradesh has framed a rule known as The Uttar Pradesh Advocates Social Security Fund Scheme Rules 1989 (hereinafter referred as a scheme). The scheme is run and managed by the trustee committee of which Law Secretary of the State Government happens to be the Member-Secretary and Advocate General of Uttar Pradesh, is the Chairman of the said committee. The trustee committee does not include any member from State Bar Council. The Security fund scheme is not compulsory but is optional. Those advocates who seeks admission on a prescribed form and deposit membership fee, are only entitled for the benefit and non members are not extended any benefit under this scheme.

14. That under Uttar Pradesh Welfare Fund, an amount of Rupees five lac is granted by State to the widow or legal heir of those advocates whose death occurs before 60 years of age earlier and now before 70 years w.e.f. 09.03.2019. No other benefit or welfare scheme has been extended by the State of Uttar Pradesh by means of welfare fund which accumulates a huge fund of about 250

Crore. Neither any scheme has been framed nor the provisions of the act has been amended.

23. That, Applicant, with profound respect, submits that Learned Addl. Advocate General has not disclosed the actual available fund in the welfare fund of state under the Act, 1974 of which State through Advocate General is Custodian and only Advocate General and Law secretary are the disbursing authority. Bar Council has no control over this fund. Further, factually incorrect facts have been brought to the notice of this Hon'ble Court that Bar Council has sufficient fund without verifying the same and the state government has transferred the money collected through welfare stamp to the treasury to be transferred to the relevant accounts. Truth is otherwise, entire amount in welfare fund is with the State Govt. and payment of even death claims are unreasonably delayed. No amount has been transferred to any treasury or any account. Entire fund is still in deposit under welfare account of the State."

On behalf of the Bar Council of Uttar Pradesh a prayer has also been made to have following directions:-

- "1. To Direct the State of U.P. to provide the financial assistance to the needy advocates on the role of the Bar Council of U.P. from the U.P. Advocates Welfare Trust Fund under the Uttar Pradesh Advocates Welfare Fund Act, 1974 or to release the sufficient fund immediately, out of rupees about 250/- crores in deposit to Bar Council Of U.P. for disbursement to needy advocates.*
- 2. To Direct the authorities concerned to constitute a high level committee, consisting of representative of State Government, Bar Council of India, any registrar of this Hon'ble Court and the Office bearer of Bar Council of U.P. to form a permanent disaster management committee for formulating Guidelines/scheme, regarding eligibility*

of needy advocates as well as Quantum of amount to be paid as early as possible.

3. To direct the Bar Council of U.P. to create a corpus fund in consultation with Bar council of India, with the aid and assistance of provisions as contemplated under section 6(3) of the Advocates Act, 1961 for relief/ welfare to needy advocates under presen/similar circumstances.”

Sri Manish Goyal, learned Additional Advocate General while reiterating the stand of State as recorded by us in the order dated 15th April, 2020 stated that the State shall be ready and willing to assist the needy Advocates in accordance with the applicable Rules.

Awadh Bar Association, Lucknow represented by its President, Sri H.G.S. Parihar, Senior Advocate and Sri Sharad Pathak, Advocate its General Secretary has reiterated its commitment to assist the needy Advocates.

Sri Parihar stated that the Association is having a fund of about Rs.15 lakhs in its hand and a scheme has also been floated for disbursement of financial aid to the Advocates in need.

According to Sri Parihar more than 1500 requests have already been received by the Awadh Bar Association and the association is expeditiously acting upon such requests.

The Allahabad High Court Bar Association is represented by its Elders Committee as well as by its President Sri Rakesh Pande, Senior Advocate and the President designated Sri Amrendra Nath Singh, Senior Advocate.

The Elders Committee is represented by Sri T.P. Singh, Senior Advocate and is assisted by Sri Siddharth Nandan, Advocate.

Sri T.P. Singh, learned Senior Advocate while expressing commitment of the Association to assist the needy Advocates and the registered Advocate Clerks pointed out certain practical difficulties in accomplishing the task. To meet the impediments certain suggestions are

advanced and those are as under:-

“65. That in the facts and circumstances, the Elders Committee suggest following interim measures to meet this emergent situation existing today :

i. Constitution of a monitoring Cell. Though there is no officially elected Body, having taken over the charge and the term of the out-going committee giving expired; but in view of the fact that relevant office bearers’ results have come; consequently the Committee of following 5 persons may be constituted for the purposes of monitoring the Scheme of distribution of Food Staff :

- a. Sri Amrendra Nath Singh, President (elect)*
- b. Sri Prabha Shankar Mishra, the Hony. General Secretary (elect)*
- c. Sri Jameel Ahmad Azmi, Senior Vice President (elect)*
- d. Sri Abhishek Shukla, Joint Secretary (Admin) (elect)*
- e. Sri Dugesh Chandra Tiwari, Treasurer (elect)*

The aforesaid Committee will chalk out a programme for distribution of cereals and food stuffs; and articles of daily necessity to the members of the Association and their Clerks.

ii. The monitoring Committee shall select 4 or more Food stores, East, West, North and South and shall authorize them to distribute the packet of selected materials to the ‘slip holders’ which will be issued under the seal and signature of the Chairman e.g. the President (elect) the senior most of the monitoring Committee. The stores shall be selected in consultation with the Elder’s Committee, to maintain transparency.

iii. The Monitoring Committee shall select the food material to be supplied.

iv. Incumbents who have been given support once shall not be entitled to second support, within 2 weeks and priority should be given to first time applicant.

v. Any 1 (One) member of the Committee, excluding the Chairman, will recommend/certify the need of the member of the Association and in case of the Clerks attached to a member of the Association, on the certification of the said member, the member of the Committee will recommend/certify, which will be finally approved by the Chairman, on whose signature and issuance of a Slip, the shopkeeper will release the material.

vi. Strict instruction will be issued to the shopkeeper that they will issue the material only and in no case the slip presented before them will be encashed. In case any such irregularity is detected, his entire payment will be held up, which will be subject to enquiry.

vii. Efforts should be made to tie up with Corporate suppliers/shops like 'Big Bazar', 'Spencers', Grofers etc. on priority for supply of food stuff, who shall on the presentation of the slip, issued by Chairman of the Committee, will make the supply.

viii. The number of Slip issued, the details of which will be forwarded by the Chairman of the Monitoring Committee, to the Chairman, Elders Committee every 3rd day, for making the payment by cheque and there will be no cash transaction.

ix. The High Court Bar Association having presently following three accounts having balance against it :-

1. Apat Kaleen Sahayata Kosh -Rs. 8,88,965.10/-

2. Advocate Welfare Fund of - Rs. 31,62,047.63/-

High Court Bar Association

3. Advocate Welfare Fund - Rs. 27,48,601.63/-

4. High Court Bar Association - Rs. 42,65,719.00/-

A photocopy of the statement of account is being annexed and marked as Exhibit-04 to this written submission.

That apart from the above fund the Elders Committee have saved more than Rs. 12 Lakhs from the money received by way of security money furnished by the respective candidates, out of which about 6.5 Lakhs is kept in the steel Almirah of the High Court Bar Association, keys of which reportedly has been obtained by the past President Sri Rakesh Pandey in his custody. A direction will be required to be issued to him to hand over the keys of the Almirah taken from the Accountant in which apart from the abovenoted cash money, cheque book etc. has also been kept to enable the Elders Committee to make available to the Monitoring Committee, to proceed with the disbursement of the food material. The said amount could not be transferred to the account of the High Court Bar Association since the election process has not come to an end and expenses of the counting staff has to be met and other dues cleared.

x. Hon'ble High Court should make available a store/office preferably at the entrance Chamber at Gate No. 3-A alongwith the police protection.

xi. The eligibility criteria for distribution of food grains will be determined by the Monitoring Committee but following shall not be eligible for the same :-

a. The senior designated Advocates and Advocates having net income of more than Rs. 5 Lakhs for the purposes of income tax.

b. Retired Government pensioner drawing pension or financial support by any means.

c. Staff members of the Government Advocates drawing

salary.

xii. Necessary staff will be provided by the Association by way of rotation to the Monetary Committee. A photocopy of the letter dated 17.4.2020 written to the administration seeking permission for such employees to attend office and to assist the Monitoring Committee is being annexed and marked as Exhibit-05 to this written submission.

xiii. A document will be prepared which may contain two columns of signatory. One of member of the Committee recommending support and other of Chairman sanctioning the support.

xiv. That it is further proposed that High Court Bar Association Disaster Management Fund be created to meet such contingency which has arisen presently, re-occurrence of which cannot be ruled out. The said fund will be created out of the contribution received from the members of the Bar at the rate of Rs. 100/- per month or Rs. 1000/- consolidated yearly.

xv. That similarly the designated senior Advocate will subscribe Rs. 1500/- per year to the above noted fund, apart from whatever they intend to contribute.

xvi. The said fund will be utilized strictly to meet the situation like present otherwise it will remain in fixed deposit.

xvii. That the said fund will be utilized in cases where the functioning of the Court comes to complete stand still excluding the situation where it become non-functional on account of the lawyers on having gone on strike for reason whatsoever.

xviii. That the senior designated advocates, pensioners, lawyers drawing retainership or the staff drawing salary from any source shall not be legible to receive any aid.”

The Elders Committee has also made a prayer in following terms:-

“1. This Hon'ble Court may be pleased to issue necessary direction for the constitution of a Committee to monitor the distribution of food grains to the members of the Association in distress and their Clerks.

2. This Hon'ble Court may further be pleased to issue necessary direction to the authorities concerned facilitating the functioning of the selected staff of the Association who assist the Monitoring Committee.

3. It is further prayed that this Court may be pleased to make available entry gate/Hall No.3A and 3B for the disbursement of the slips/food material in case the Monitoring Committee decides to distribute the same itself.”

Considered the facts, the applicable law and the submissions made before us.

The State Legislature of Uttar Pradesh enacted the Uttar Pradesh Advocates Welfare Fund Act, 1974 to provide for the establishment and operation of a fund for the promotion of welfare of Advocates in Uttar Pradesh. As per Section 2(a), “Advocate” means an Advocate enrolled on the roll of the Bar Council of Uttar Pradesh and “Trustees Committee” means the Committee constituted under Section 3. The term “Fund” means the fund referred under Section 3 of the Act of 1974.

As per Section 3 of the Act of 1974 there shall be a charitable trust to achieve following objects:-

“(a) obtaining from the Life Insurance Corporation of India a policy of group life insurance of advocates upto the age of 60 years;

(b) the provision of buildings for halls and libraries, canteens and other facilities for District Bar Association, or the making of contributions to District Bar Associations for the purposes of making such

provision;

[(bb) the organization of Advocates Social Security Fund Scheme hereinafter referred to as the Scheme, for such advocates who have become members of the Scheme;]

(c) the organization of other schemes for the welfare of needy advocates; and

(d) such other objects as would, in the opinion of the Trustees Committee, improve the working conditions and facilities of advocates.”

The Trustees Committee as prescribed under Section 3(3) of the Act of 1974 consists of the Advocate General of Uttar Pradesh, the Chairman, State Bar Council and the Secretary to the State Government in the judicial department. The Committee is a body corporate with the perpetual succession and a common seal. The financial source of the fund created under the Act of 1974 is by aid from the State Government, State Bar Council and by affixing stamp on vakalatnama as per Section 9.

The objects of the Act of 1974 are too wide including the authority available to the Trustees Committee to opine and decide the facilities which may be extended to the Advocates.

As stated by Sri B.K. Srivastava, learned Senior Advocate appearing on behalf of the Bar Council of Uttar Pradesh, the Trustees Committee has yet not decided the steps which are required to be taken to provide assistance to the members of the fund. A fact also brought to our notice is that the aid as per the Act of 1974 has not been given even to the widows of the Advocates from last several years.

In our considered opinion, the delay in deciding claims by the Trustees Committee is quite serious and virtually that frustrates the very purpose creating a statutory fund. The Committee is a custodian of a charitable trust and that should have acted upon with all diligence on receiving the request for disbursement of assistance to the members of the

fund or their heir. As a matter of fact main financial source of the fund is day to day assistance given by the Advocates. The fund is meant to support its members as and when occasion arises with lightening speed.

We failed to understand as to why the Trustees Committee has not met and is not settling claims of its members expeditiously.

An important aspect in this matter is the need of assistance that may be extended to the registered Advocate Clerks. The Allahabad High Court Rules prescribe a complete procedure for their registration and their duties towards office of the court. The provisions indicate a significant role of registered Advocate Clerks in justice delivery system. The provisions mainly relate to registration of Advocate Clerks, their duties in office of the court and the cancellation of registration in certain eventualities. No provision however, is available to regulate their service conditions and rightly so as they are essentially in employment of the Advocates.

True it is, Advocate Clerks are not in employment of the Court, but utility of their functioning in Court office is well established and well recognized. The service rendered by the Advocate Clerks is not a service to an individual but to the system by a class of professionals attached with Advocates.

Looking to the functional significance of the Advocate Clerks several State Legislatures have made provisions to regulate their service conditions. **“The Kerala Advocates' Clerks Welfare Fund Act, 2003”** was enacted by the State legislature of the State of Kerala for constitution of a welfare fund for benefit of Advocates' Clerks. As per the Act aforesaid an “Advocate Clerk” means a Clerk employed by an Advocate and recognized as such by such Authority and in such manner as may be prescribed and who is a member of an Advocates' Clerks Association. Under the Act of 2003 a fund has been established to ensure welfare of the Advocates' Clerks. In the State of Orissa also “The Orissa Advocates' Clerks Welfare Fund Act, 2008” is in operation and that too provides Advocates welfare fund and several other amenities to the Advocates'

Clerks. A similar kind of enactment is in existence in the State of Andhra Pradesh in the name of “The Andhra Pradesh Advocates' Welfare Fund Act, 1987”. Pertinent to mention here that the Rules of the Gauhati High Court enacted under the Assam High Court Order 1948 also provides several protections to the Advocates' Clerks. The provisions referred above clearly indicate existence of the professional class of the Advocates' Clerks and its importance in justice delivery system. We have also seen in our day to day functioning that an Advocate's Clerk plays a vital role in the court management, though he is not an employee of the court. The profession of the Advocates' Clerks, thus, certainly deserves to be recognized in line of the other profession like Advocates, Chartered Accountants, Doctors, Nursing, etc.

Though that is an issue within the domain of the State legislature, we are of the view that there must be some statutory provisions to regulate service conditions of the registered Advocates' Clerks.

On noticing the facts stated before us and the provisions of applicable, we deem it appropriate to issue following directions at this stage:-

1. The Trustees Committee constituted under the Uttar Pradesh Advocates Welfare Fund Act, 1974 shall meet at earliest to have a scheme to provide assistance to the needy Advocates, who are deleteriously affected due to COVID-19 lockdown. After having the scheme, the Trustees Committee shall also ensure release of fund to all the court attached recognized Bar Associations in the State of Uttar Pradesh with specific direction to the Associations to further disburse the aid to members of the fund in accordance with the scheme so enacted.

The entire exercise as aforesaid is required to be completed before next date of listing of this petition.

2. The Trustees Committee is further directed to consider and decide all the applications pending before it for disbursement of aid to the widows of Advocates and also to the other claimants. Such applications

are required to be considered and decided by the Trustees Committee within a period of one month from today.

3. As per its decision, the Bar Council of India, New Delhi shall release the funds to the Bar Council of Uttar Pradesh at earliest, as far as possible on or before 27th April, 2020. The Bar Council of Uttar Pradesh in the meanwhile, shall frame a scheme to disburse assistance to the needy Advocates through the court attached Bar Associations. The State Bar Council shall ensure that the funds be disbursed fairly, uniformly and with all caution to prevent their misutilization. The Bar Council of Uttar Pradesh shall issue necessary directions to all the court attached Bar Associations to maintain complete account of the amount released to them for disbursement or use of that for the welfare of the needy Advocates.

4. The Awadh Bar Association, Lucknow has already framed a complete scheme for extending help to the needy Advocates. The Association shall make its best efforts to execute the scheme at earliest as far as possible within a period of one week from today.

5. The Allahabad High Court Bar Association appears to have sufficient funds with it but due to certain peculiar circumstances it is not in position to extend its helping hand to the needy members forthwith. To meet this eventuality, we deem it appropriate to constitute a Monitoring Committee consisting of following members:-

(i) Sri Rakesh Pande, Senior Advocate and President, Allahabad High Court Bar Association.

(ii) Sri Amrendra Nath Singh, Senior Advocate and designated President, Allahabad High Court Bar Association.

(iii) Sri J.B. Singh, Advocate and General Secretary, Allahabad High Court Bar Association.

(iv) Sri Prabha Shankar Mishra, Advocate and designated General Secretary, Allahabad High Court Bar Association.

(v) Sri V.P. Srivastava, Senior Advocate, Allahabad.

(vi) Sri Vikash Chandra Tripathi, Chief Standing Counsel,

Allahabad.

The Committee shall act as an interlocutory body to operate the accounts of the Association for the purpose of grant of aid to members of the Allahabad High Court Bar Association.

The Monitoring Committee shall frame a complete scheme for disbursement of aid to the needy members of the Allahabad High Court Bar Association. The Monitoring Committee is required to ensure disbursement of aid to the needy Advocates at Allahabad on or before 25th April, 2020. While doing so it will ensure fair and uniform grant of aid and shall also maintain complete account of that. The Registrar (Protocol) of the High Court shall allow the members of the Committee to open and use the office of Bar Association by maintaining social distancing.

6. The Registrar General of this Court is directed to initiate the process of registering Advocate Clerks in accordance with the Allahabad High Court Advocates Clerks (Registration of Advocates Clerks) Rules, 1997 forthwith.

7. We would also like to request all the designated Senior Advocates and the Advocates in the State of Uttar Pradesh having adequate resources to assist the Bar Associations to which they are members for extending a helping hand to the Advocate Clerks.

8. While parting with the case, we also deem it appropriate to request the State Government to examine viability to have an enactment for welfare of the registered Advocate Clerks working in different courts in the State of Uttar Pradesh.

Let this petition for writ be listed on 5th May, 2020 for further orders.

Order Date :-20.4.2020

Bhaskar

(Siddhartha Varma, J.)

(Govind Mathur, C.J.)