Neutral Citation No. - 2023:AHC:219833-DB

Chief Justice's Court

Case :- WRIT - A No. - 9385 of 2023
Petitioner :- U.P. State Law Officers Ministerial Staff Association High Court, Allahabad And Another
Respondent :- The State Of U.P. And 2 Others
Counsel for Petitioner :- Krishna Shukla,Sr. Advocate
Counsel for Respondent :- C.S.C.

Hon'ble Pritinker Diwaker,Chief Justice
Hon'ble Ashutosh Srivastava,J.

1. The writ petition has been filed by the petitioners with the following prayers:

"(i) to issue a writ, order or direction in the nature of mandamus declaring the Uttar Pradesh Advocate General and Law Officers Establishment Service (Fourth Amendment) Rules, 2022 (Annexure 5 to the writ petition) to be ultra vires of the Constitution of India;

(ii) to issue a writ, order or direction in the nature of mandamus restraining the Principal Secretary, Law, Government of U.P., Lucknow from acting as either the appointing authority of the employees of the establishment of the Advocate General or working as the disciplinary authority;

(iii) to issue any other writ, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

2. The impugned amending service rules called the Uttar Pradesh Advocate General and Law Officer Establishment Service (Fourth Amendment) Rules, 2022 govern the service conditions of the employees of the Advocate General and Law Officers establishment. By the impugned service rules the Advocate General has been removed as the appointing authority (hence ceases to be

the disciplinary authority) of much of the ministerial staff in the said establishment and simultaneously the said powers have been vested in the Principal Secretary (Law).

3. Shri Krishna Shukla, learned counsel for the petitioners submit that :

I. The aforesaid amended service rules are contrary to the provisions of Article 165 of the Constitution of India.

II. The amended service rules are also violative of Article 14 of the Constitution as they create an unreasonable classification.

III. The amended service rules will lead to loss of authority of the office of the Advocate General and will adversely impact the functioning of the high office.

IV. The amended service rules do not subserve the purpose sought to be achieved by the State Government.

4. Per contra, Shri M.C. Chaturvedi, learned Additional Advocate General for the State contends that :

I. The State is the employer and has every right to frame the service rules.

II. The office of the Advocate General will not be impacted by the aforesaid amendments, inasmuch as, the functions of the Advocate General are not being interfered with.

III. The rules are consistent with Article 14 and no one can question the prerogative of the State to frame service conditions for the benefit of the employees and the departments.

IV. The Advocate General is very busy due to the nature of duties of the office and hence the control of the staff of the Advocate General Office is being vested in the Principal Secretary (Law), State of Uttar Pradesh.

5. The amended service rules are extracted hereunder:

"In pursuance of the provisions of clause (3) of the Article 348 of the constitution, the Governor is pleased to order publication of the following English translations of notifications no-2216 dated- 27 December, 2022

Government of Uttar Pradesh

Nyay Anubhagh-1 (Uccha Nyayalaya)

No.-52/2022/**2216/Saat-nyay-1-2022-138/2010-1536276**

Lucknow:Dated2 7 **December,2022**

NOTIFICATION

Miscellaneous

In exercise of the powers conferred by proviso to Article 309 of the Constitution, the Governor is pleased to make the following rules with a view to amending the Uttar Pradesh Advocate General and Law Officers Establishment Service Rules, 2009:-

Uttar Pradesh Advocate General and Law Officer Establishment Service (Fourth Amendment) Rules, 2022

Short title and commencement	1-		(1) These rules may be called the Uttar Pradesh Advocate General and Law Officers Establishment Service (Fourth Amendment) Rules,2022. (2) They shall come into force at once.
Insertion of New Sub-rule	2-		In the Uttar Pradesh Advocate General and Law Officers Establishment Service Rules 2009, here in after referred to as the said rules after existing sub rule of (l) of rule 3 the following sub rule (m) and (n) shall be inserted namely. (m) 'Commission' means the Uttar Pradesh Public Service Commission. (n) 'Subordinated Commission' means the Uttar Pradesh Subordinate Services Selection Commission.
Amendment of Rule 5	**3-**	**Source of recruitment**	In the said Rules, for existing rule 5 as set out in column-1 below, the rule set out in column-2 shall be substituted and in the said Rules, sub- rule (u) shall be added as follows:-

Column-1								Column-2					
Existing Appendix								Hereby substituted Appendix					
Sl.No	Name of Post	No of Post	Pay-scale			Appointing Authority		Sl.No	Name of Post	No.of Posts	Pay-scale		Appointing Authority
			Name of Pay band	Pay Band(Rs)	Grade Pay (Rs)						Level	Pay Matrix (Rs)	
1	Senior Superin-tendent of Litiga-tion	03	P.B.-13	15600-39100	5400	Governor		1	Senior Superintendent of Litigation	03	12	78800-209200	Governor
2	Superintendent of Litigation	09	P.B.-2	9300-34800	4200	Advocate General		2	Superintendent of Litigation.	09	11	67700-208700	Governor
3	Management Officer	01	P.B.-1	9300-34800	4200	Advocate General		3	Management Officer	01	11	67700-208700	Governor
4	Section officer	13	P.B.-2	9300-34800	4200	Advocate General		4	Section officer	13	10	56100-177500	Governor
5	Review Officer	72	P.B.-2	9300-34800	4200	Advocate General		5	Review Officer	72	8	47600-151100	Principal Secretary Law
6	Assistant Review Officer (Records)	07	P.B.-1	5200-20200	2800	Advocate General		6	Assistant Review Officer	101	7	44900-142400	Principal Secretary Law
7	Assistant Review Officer	94	P.B.-1	5200-20200	2800	Advocate General		7	Computer assistant	103	4	25500-81100	Principal Secretary Law
8	Routine Grade Clerk	103	P.B.-	5200-20200	1900	Advocate General		8	Chief Private Secretary	01	13-A	131100-216600	Governor
9	Chief Private Secretary	01	P.B.-3	15600-39100	6600	Governor		9	Officer On Special Duty	01	11	67700-208700	Governor
10	Officer on Special Duty	01	P.B.-3	15600-39100	6600	Governor		10	Private Secretary-4	02	13	123100-215900	Governor
11	Private Secretary	37	P.B.-2	9300-34800	4200	Advocate General		11	Private Secretary-3	13	12	78800-209200	Governor
12	Personal Assistant	38	P.B.-2	9300-34800	4200	Advocat e General		12	Private Secretary-2	17	11	67700-208700	Governor
13	Stenographer	42	P.B.-1	5200-20200	2800	Advocate General		13	Private Secretary-1	32	10	56100-177500	Governor
14	Section Officer (Accounts/ Cash)	03	P.B.-2	9300-34800	4200	Advocate General		14	Additional Private Secretary	53	8	47600-151100	Principal Secretary Law
15	Accountant-cum- Cashier	02	P.B.-2	9300-34800	4200	Advocate General		15	Section Officer (Accounts/ Cash)	03	10	56100-177500	Governor
16	Assistant Review Officer (Accounts)	03	P.B.-1	5200-20200	2800	Advocate General		16	Review Officer (Accounts)	02	8	47600-151100	Principal Secretary Law
17	Routine Grade Clerk (Accounts)	10	P.B.-1	5200-20200	1900	Advocate General		17	Assistant Review Officer (Accounts)	17	7	44900-142400	Principal Secretary Law
18	Librarian	02	P.B.-3	15600-39100	5400	Governor		18	Librarian	02	10	56100-177500	Governor
19	Deputy librarian	01	P.B.-2	9300-34800	4200	Advocate General		19	Deputy librarian	01	6	35400-112400	Principal Secretary Law
20	Research Assistant	02	P.B.-2	9300-34800	4200	Advocate General		20	Research Assistant	02	6	35400-112400	Principal Secretary Law
21	Cataloger	02	P.B.-1	5200-20200	2800	Advocate General		21	Cataloger	02	5	29200-92300	Principal Secretary

													Law
22	Computer	06	P.B.-1	5200-	2800	Advocate		22	Computer	06	5	29200-	Principal
	Operator			20200		General			Operator Grade-			92300	Secretary
	Grade-B								B				Law
23	Computer	08	P.B.-1	5200-	2400	Advocate		23	Computer Operator	18	4	25500-	Principal
	Operator			20200		General			Grade-A			81100	Secretary
	Grade-A												Law
24	Assistant	01	P.B.-1	5200-	1900	Advocate		24	Assistant	01	2	19900-	Principal
	Computer			20200		General			computer			63200	Secretary
	Operator								operator				Law
25	Photostat	01	-1 S	4400-	1650	Special		25	Photostat operator	03	-	-	Advocate
	operator			7440		Secretary							General
26	Photostat	02	-1 S	4400-	1400	Advocate		26	Jamadar	01	-	-	Advocate
	Operator-2			7440		General							General
27	Jamadar	01	-1 S	4400-	1400	Advocate		27	Daftari	09	-	-	Advocate
				7440		General							General
28	Daftari	09	- 1 S	4400-	1300	Advocate		28	Anusewak	180	-	-	Advocate
				7440		General							General
29	Peon	180	- 1 S	4400-	1300	Advocate		29	Mali	01	-	-	Advocate
	(Anusewak			7440		General							General

30	Mali	01	- 1 S	4400-	1300	Advocate		30	Watchman	03	-	-	Advocate
				7440		General							General
31	Chowkidar	03	- 1 S	4400-	1300	Advocate		31	Electrician	01	-	-	Advocate
				7440		General							General
32	Electrician	01	- 1 S	4400-	1300	Advocate		32	Sweeper	05	-	-	Advocate
				7440		General							General
33	Safaiwala	05	- 1 S	4400-	1300	Advocate		33	Bundle Lifter	04	-	-	Advocate
				7440		General							General
34	Bunddle	04	- 1 S	4400-	1300	Advocate		34	Farrash	02	-	-	Advocate
	Lifter			7440		General							General
35	Farrash	01	- 1 S	4400-	1300	Advocate		35	Computer Assistant	01	4	25500-	Principal
				7440		General			(Uttranchal)			81100	Secretary
								36	Data Base	02	7	44900-	Principal
									Administrator			142400	Secretary
													Law

6. Clearly the impugned Rules bring about far reaching changes. The impugned Rules need to be examined in light of various constitutional provisions and provisions of law before a final decision can be made on the challenge to the said Rules.

7. The office of the Advocate General of the State has a long and chequered history in India which predates the Constitution of India. The Government of India Act, 1935 contemplated the appointment of the Advocate General by the Governor of the Province and the former held his

office during the pleasure of the latter. The Constitution of India provides for appointment of an Advocate General for each State of India. The appointment of the Advocate General is made under Article 165 of the Constitution of India. The provision is reproduced hereunder for ease of reference:

"**165**. **Advocate General for the State**.-(1) The Governor of each State shall appoint a person who is qualified to be appointed a Judge of a High Court to be Advocate General for the State.

(2) It shall be the duty of the Advocate General to give advice to the Government of the State upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the Governor, and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force.

(3) The Advocate General shall hold office during the pleasure of the Governor, and shall receive such remuneration as the Governor may determine."

8. The Advocate General of a State is a constitutional office. The Governor of the State appoints a person qualified to be appointed as a Judge of a High Court to be Advocate General for the State. The Constitution casts a duty on the Advocate General of the State to give advice to the State Government upon such legal matters, and to perform such other duties of a legal character as may be referred to or assigned to him by the Governor. The Advocate General is also required to discharge functions conferred on him under the Constitution or any other law for the time being enforced.

9. The high standing of the office of the Advocate General

in the constitutional scheme is also evident from Article 177 of the Constitution of India. Article 177 of the Constitution of India vests in the Advocate General for the State, the right to speak in, and to otherwise take part in the proceedings of, the Legislative Assembly of the State or, Legislative Council of the State. The Advocate General under the provisions is also entitled to be a member of any committee of the legislature when he is so named. The provision is extracted hereunder:

"**177. Rights of Ministers and Advocate General as respects the Houses-** Every Minister and the Advocate General for a State shall have the right to speak in, and otherwise to take part in the proceedings of, the legislative Assembly of the State or, in the case of a State having a Legislative Council, both Houses, and to speak in, and otherwise to take part in the proceedings of, any committee of the Legislature of which he may be named a member, but shall not, by virtue of this article, be entitled to vote."

10. By convention and long held traditions the Advocate General is the senior most law officer of the State and pater familias of the Bar. The Advocate General is entitled to precedence over all other advocates and is also given the right to first audience in Courts as a matter of practice. The Advocate General of the State of the Uttar Pradesh is an ex officio member of the Bar Council of the State of Uttar Pradesh. On this footing alone the Advocate General can be called the First Advocate of the State.

11. Being the highest law officer of the State, the duties and responsibilities of the Advocate General are manifold. The Advocate General tenders advice to the State Government on legal and constitutional issues whenever

called upon to do so. The Advocate General of the State also represents the State Government in litigations various courts and tribunals. The Advocate General advances his arguments and conducts cases before the courts and tribunals as and when called upon to do so. The Advocate General is the leader of the legal team of the State Government.

12. The constitutional role of the Advocate General to tender legal advice and perform duties of legal character as entrusted to him by the State Government is a function of great sensitivity and importance. The discharge of these functions requires deep knowledge of the laws and the constitution, rich experience at the Bar and the ability to give independent opinions with the highest integrity. Speaking of the position of the State Government with the Advocate General the Supreme Court in **Joginder Singh Wasu v. State of Punjab** reported at **(1994) 1 SCC 184** held:

"20. ….The position of the State vis-a-vis the Advocate General may be described in the words of William Shakespeare:

"Whose worth is unknown,

Although his height be taken."

13. The opinions given by the Advocate General are of a highly confidential in nature, which have a bearing on important transactions of the State Government and issues involving high stakes. It is natural that office of the Advocate General will often be subject to pulls and

pressures of political governments. However, constitutional scheme clearly envisages that the Advocate General should rise above the narrow trammels of political or party associations and render independent wise and scholarly advice. Further the constitutional provisions enjoin the State Government to protect the independence and prestige of the office of the Advocate General. The Advocate General can truly be called the keeper of the constitutional conscience of the State Government.

14. The relationship between the State and the Advocate General is a fiduciary relationship. The concept of fiduciary relationship was discussed by the Supreme Court in **Central Public Information Officer, Supreme Court of India v. Subhash Chandra Agarwa**l reported at **(1994) 2 SCC 204**.

"235. The appellant argued that the information about the assets of judges is exempt from disclosure, by virtue of Section 8(1)(e) of the RTI Act which casts a fiduciary duty on the Chief Justice of India to hold the asset declarations in confidence. It is argued by the respondent that judges, while declaring their assets, do so in their official capacity in accordance with the 1997 resolution and not as private individuals. It is urged that the process of information gathering about the assets of the judges by the Chief Justice of India, is in his official capacity and therefore, no fiduciary relationship exists between them.

236. In order to determine whether the Chief Justice of India holds information with respect to asset declarations of judges of the Supreme Court in a fiduciary capacity, it is necessary to assess the nature of the relationship and the power dynamics between the parties. Justice Frankfurter of the United States Supreme Court in SEC v Chenery Corp, while determining the question whether officers and directors who manage a holding company in the process of reorganisation occupy positions of trust, stated:

> "….But to say that a man is a fiduciary only begins analysis; it gives direction to further inquiry. To whom is he a fiduciary? What obligations does he owe as a fiduciary? In what respect has he failed to discharge these obligations? And what are the consequences of his deviation from duty?

237. Black‘s Law Dictionary52, defines —fiduciary relationship‖ thus:

> "A relationship in which one person is under a duty to act for the benefit of the other on matters within the scope of the relationship. Fiduciary relationships – such as trustee- beneficiary, guardian-ward, principal-agent, and attorney-client – require an unusually high degree of care. Fiduciary relationships usually arise in one of four situations : (1) when one person places trust in the faithful integrity of another, who as a result gains superiority or influence over the first, (2) when one person assumes control and responsibility over another, (3) when one person has a duty to act for or give advice to another on matters falling within the scope of the relationship, or (4) when there is a specific relationship that has traditionally been recognized as involving fiduciary duties, as with a lawyer and a client or a stockbroker and a customer.

(emphasis supplied)

238. In Words and Phrases the term "fiduciary" is defined: "Generally, the term 'fiduciary' applies to any person who occupies a position of peculiar confidence towards another...It refers to integrity and fidelity... It contemplates fair dealing and good faith, rather than legal obligation, as the basis of the transaction… The term includes those informal relations which exist whenever one party trusts and relies upon another, as well as technical fiduciary relations.

(Emphasis supplied)

239. In Corpus Juris Secundum "fiduciary" is defined thus:

> "A general definition of the word which is sufficiently comprehensive to embrace all cases cannot well be given. The term is derived from the civil, or Roman law. It connotes the idea of trust or confidence, contemplates good faith, rather than legal obligation, as the basis of the transaction, refers to the integrity, the fidelity, of the party trusted,

> rather than his credit or ability, and has been held to apply to all persons who occupy a position of peculiar confidence toward others, and to include those informal relations which exist whenever one party trusts and relies on another, as well as technical fiduciary relations.
>
> The word 'fiduciary', as a noun, means one who holds a thing in trust for another, a trustee, a person holding the character of a trustee, or a character analogous to that of a trustee, with respect to the trust and confidence involved in it and the scrupulous good faith and candor which it requires; a person having the duty, created by his undertaking, to act primarily for another's benefit in matters connected with such undertaking. Also more specifically, in a statute, a guardian, trustee, executor, administrator, receiver, conservator or any person acting in any fiduciary capacity for any person, trust or estate. Some examples of what, in particular connections, the term has been held to include and not to include are set out in the note.

240. In CBSE v Aditya Bandopadhyay, a two judge Bench of this Court while discussing the nature of fiduciary relationships relied upon several decisions and explained the terms "fiduciary" and "fiduciary relationship" thus:

> "39. The term "fiduciary" refers to a person having a duty to act for the benefit of another, showing good faith and candour, where such other person reposes trust and special confidence in the person owing or discharging the duty. The term "fiduciary relationship" is used to describe a situation or transaction where one person (beneficiary) places complete confidence in another person (fiduciary) in regard to his affairs, business or transaction(s). The term also refers to a person who holds a thing in trust for another (beneficiary). The fiduciary is expected to act in confidence and for the benefit and advantage of the beneficiary, and use good faith and fairness in dealing with the beneficiary or the things belonging to the beneficiary. If the beneficiary has entrusted anything to the fiduciary, to hold the thing in trust or to execute certain acts in regard to or with reference to the entrusted thing, the fiduciary has to act in confidence and is expected not to disclose the thing or information to any third party."

(emphasis supplied)

241. In RBI v Jayantilal N Mistry56, a two judge Bench of this Court

reiterated the observations made in CBSE v Aditya Bandopadhyay and held that RBI did not place itself in a fiduciary relationship with other financial institutions by virtue of collecting their reports of inspections, statements of the banks and information related to the business. It was held that the information collected by the RBI was required under law and not under the pretext of confidence or trust:

> "64. The exemption contained in Section 8(1)(e) applies to exceptional cases and only with regard to certain pieces of information, for which disclosure is unwarranted or undesirable. If information is available with a regulatory agency not in fiduciary relationship, there is no reason to withhold the disclosure of the same. However, where information is required by mandate of law to be provided to an authority, it cannot be said that such information is being provided in a fiduciary relationship. As in the instant case, the financial institutions have an obligation to provide all the information to RBI and such information shared under an obligation/duty cannot be considered to come under the purview of being shared in fiduciary relationship.
>
> (Emphasis supplied)

242. The Canadian Supreme Court in the case of Hodgkinson v Simms57, discussed the term 'fiduciary' thus:

> "A party becomes a fiduciary where it, acting pursuant to statute, agreement or unilateral undertaking, has an obligation to act for the benefit of another and that obligation carries with it a discretionary power. Several indicia are of assistance in recognizing the existence of fiduciary relationships: (1) scope for the exercise of some discretion or power; (2) that power or discretion can be exercised unilaterally so as to effect the beneficiary's legal or practical interests; and, (3) a peculiar vulnerability to the exercise of that discretion or power.
>
> The term fiduciary is properly used in two ways. The first describes certain relationships having as their essence discretion, influence over interests, and an inherent vulnerability. A rebuttable presumption arises out of the inherent purpose of the relationship that one party has a duty to act in the best interests of the other party. The second, slightly different use of fiduciary exists where fiduciary obligations, though not innate to a given relationship, arise as a matter

> of fact out of the specific circumstances of that particular relationship. In such a case the question to ask is whether, given all the surrounding circumstances, one party could reasonably have expected that the other party would act in the former's best interests with respect to the subject matter at issue. Discretion, influence, vulnerability and trust are non-exhaustive examples of evidentiary factors to be considered in making this determination. Outside the established categories of fiduciary relationships, what is required is evidence of a mutual understanding that one party has relinquished its own self-interest and agreed to act solely on behalf of the other party. In relation to the advisory context, then, there must be something more than a simple undertaking by one party to provide information and execute orders for the other for a relationship to be enforced as fiduciary.

243. Dr Paul Finn in his comprehensive work on "Fiduciary Obligations", describes a fiduciary as someone who has an obligation to act ―in the interests of‖ or ―for the benefit of‖ their beneficiaries in some particular matter. For a person to act as a fiduciary they must first have bound themselves in some way to protect and further the interests of another.59 Where such a position has been assumed by one party then that party's position is potentially of a fiduciary.60 The Federal Court of Australia in the case of Australian Sec & Inv Comm‘n v Citigroup Global Markets Australia Pty Ltd61 has held:

> "The question of whether a fiduciary relationship exists, and the scope of any duty, will depend upon the factual circumstances and an examination of the contractual terms between the parties... Apart from the established categories, perhaps the most that can be said is that a fiduciary relationship exists where a person has undertaken to act in the interests of another and not in his or her own interests but all of the facts and circumstances must be carefully examined to see whether the relationship is, in substance, fiduciary… The critical matter in the end is the role that the alleged fiduciary has, or should be taken to have, in the relationship. It must so implicate that party in the other‘s affairs or so align him with the protection or advancement of that other‘s interests that foundation exists for the fiduciary expectation."

(Emphasis supplied)

244. A fiduciary must be entrusted with a degree of discretion (power) and

must have freedom to act without resorting to prior approval of the beneficiary.62 The greater the independent authority to be exercised by the fiduciary, the greater the scope of fiduciary duty.63 The person so entrusted with power is required to determine how to exercise that power.64 Fiduciaries are identified by ascendancy, power and control on the part of the stronger party and therefore, a fiduciary relationship implies a condition of superiority of one of the parties over the other.65 It is not necessary that the relationship has to be defined as per law, it may exist under various circumstances, and exists in cases where there has been a special confidence placed in someone who is bound to act in good faith and with due regard to the interests of the one reposing the confidence. Such is normally the case with, inter alia, attorney-client, agent-principal, doctor-patient, parent-child, trustees-beneficiaries66, legal guardian-ward67, personal representatives, court appointed receivers and between the directors of company and its shareholders. In Needle Industries (India) Ltd v Needle Industries Newey (India) Holding Ltd, and Dale & Carrington Invt (P) Lt v P K Prathaphan, this Court held that the directors of the company owe a fiduciary duty to its shareholders. In P V Sankara Kurup v Leelavathy Nambier70, this Court held that an agent and power of attorney can be said to owe a fiduciary relationship to the principal."

15. The relationship of the Advocate General with the State has many elements of the traditional lawyer-client relationship, but as the succeeding paragraphs will also show, there are major distinctions as well in the said relationship.

16. The duties of a lawyer and his responsibility towards his client have been subject matter of decisions of various Constitutional Courts. The Supreme Court in **State of U.P. v. U.P. State Law Officers Association** reported at **(1994) 2 SCC 204** noticed the fundamental service oriented character of the legal profession and the service based duties of lawyers:

"**14.** Legal profession is essentially a service-oriented profession. The

ancestor of today's lawyer was no more than a spokesman who rendered his services to the needy members of the society by articulating their case before the authorities that be. The services were rendered without regard to the remuneration received or to be received. With the growth of litigation, lawyering became a full-time occupation and most of the lawyers came to depend upon it as the sole source of livelihood. The nature of the service rendered by the lawyers was private till the Government and the public bodies started engaging them to conduct cases on their behalf. The Government and the public bodies engaged the services of the lawyers purely on a contractual basis either for a specified case or for a specified or an unspecified period. Although the contract in some cases prohibited the lawyers from accepting private briefs, the nature of the contract did not alter from one of professional engagement to that of employment. The lawyer of the Government or a public body was not its employee but was a professional practitioner engaged to do the specified work. This is so even today, though the lawyers on the full-time rolls of the Government and the public bodies are described as their law officers. It is precisely for this reason that in the case of such law officers, the saving clause of Rule 49 of the Bar Council of India Rules waives the prohibition imposed by the said rule against the acceptance by a lawyer of a full-time employment.

15. The relationship between the lawyer and his client is one of trust and confidence. The client engages a lawyer for personal reasons and is at liberty to leave him also, for the same reasons. He is under no obligation to give reasons for withdrawing his brief from his lawyer. The lawyer in turn is not an agent of his client but his dignified, responsible spokesman. He is not bound to tell the court every fact or urge every proposition of law which his client wants him to do, however irrelevant it may be. He is essentially an adviser to his client and is rightly called a counsel in some jurisdictions. Once acquainted with the facts of the case, it is the lawyer's discretion to choose the facts and the points of law which he would advance. Being a responsible officer of the court and an important adjunct of the administration of justice, the lawyer also owes a duty to the court as well as to the opposite side. He has to be fair to ensure that justice is done. He demeans himself if he acts merely as a mouthpiece of his client. This relationship between the lawyer and the private client is equally valid between him and the public bodies.”

17. The relationship of the Advocate General with the State is defined by the fundamentals of a lawyer client

relationship, and yet it is much deeper and wider. The engagement of the Advocate General with the State Government is not a one off or on a case to case relationship. The Advocate General is engaged with the State Government on a daily basis across various legal and constitutional issues of governance and also in respect of litigation before different courts and tribunals on a regular basis.

18. The Advocate General is the constant legal adviser and law officer of the State Government till such time he holds the constitutional office. The Advocate General has to enjoy the unqualified trust and confidence of the State Government which has to be duly backed by administrative support in order to function effectively and discharge the constitutional functions of the office. The duties of the Advocate General are very delicate, exacting and confidential in nature. They require high degree of fidelity and good faith. The Advocate General being head of the legal team of the State is in a unique position to observe the performance of State Counsels. The Advocate General is uniquely positioned to identify the legal issues and systemic deficiencies, since he deals with them on the widest scale and regular basis. The Advocate General is also best placed to make appropriate recommendations to the State Government in this regard.

19. The Kerala High Court in **Secretary to Advocate General and others v. State Information Commissioner, Kerala** reported at **2022 SCC OnLine**

Ker 4844 held that the communication between the Advocate General and the State Government as legal adviser and the legal governments are liable to be protected under Section 8(1)(e) of the Right to Information Act, 2005 by holding as under:

"**13.** From the above discussions, it is clear that the relationship between the Advocate General and the Government is a lawyer-client relationship. As per Article 165 (2) of the Constitution of India, it is the duty of the Advocate General to give advice to the Government of the State upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the Governor, and he has to discharge the functions conferred on him by or under the Constitution or any other law for the time being in force. The Advocate General may give legal opinion to the Government on various issues. Some issues may be sensitive, some issues may be political, some issues may be religious, some issues may be about the functioning of the Government, and some issues may be about the constitutional validity of certain proposed enactments. The legal opinions given by the Advocate General will usually be honoured by the Government, but it is not binding to the Government. As per Article 163 of the Constitution of India, there shall be a council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion. The Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister, and the Ministers shall hold office during the pleasure of the Governor. The executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with the Constitution of India. While deciding issues by the executive, there may be legal conundrums to be resolved. In such situations, the advice of the Advocate General is usually called for by the Government. Those advices and opinions given by the Advocate General are to be treated as an opinion given by a lawyer to his client. Section 126 of the Indian Evidence Act, 1872 protects the disclosure of such advice or opinion provided by the Advocate General to the Government. Therefore, usually, if a legal opinion is given by the Advocate General to the Government, the same need not be disclosed, and it is protected under Section

126 of the Indian Evidence Act, 1872.

"**19**. ….The same is protected as per Section 8(1)(e) of the Act 2005. The Advocate General is the advisor of the Government. As I mentioned earlier, there may be delicate and sensitive issues, in which the Government wants the opinion of the Advocate General. Those are confidential communications between the Government and the Advocate General. The legal opinions given by the Advocate General to the Government should always be confidential. That is protected under Section 8(1)(e) of the Act 2005. If it is protected under Section 8(1)(e) of the Act 2005, the overriding effect of Section 22 of the Act to the Evidence Act will also not be available. In such circumstances, Section 126 of the Indian Evidence Act is also applicable as far as a legal opinion given by the Advocate General to the Government is concerned. Therefore, I am not in a position to agree with the orders passed by the State Information Commission in these two writ petitions to disclose the legal opinions given by the Advocate General to the Government. Therefore, these writ petitions are to be allowed quashing the orders passed by the State Information Commission."

20. In view of the nature and gravity of the functions of the constitutional office of the Advocate General, it is always expected that most eminent members of the Bar are appointed to hold the post. The Advocate General on his part is expected to leave his lucrative law practice to answer the calling of public service.

21. For efficacious functioning of the office of the Advocate General and to ensure that the constitutional object of creation of the office is achieved various demands are made on the Advocate General as well as the State Government. The Advocate General cannot afford to be a timid person nor can the State deny him the infrastructure and prestige and other support to ensure the independence of the office. It is pious duty of the State Government to take all necessary steps to remove

extraneous considerations and influences which may impede the functioning of the Advocate General. Further the State Government should also ensure that office of the Advocate General is duly streamlined for achieving highest levels of efficiency in performance and top confidentiality in functioning. Besides the aforesaid constitutional duties, the Advocate General has to perform statutory functions under various enactments.

22. Section 92 of the Code of Civil Procedure vests power in the Advocate General to accord permission to claimants to institute suits under Section 92 of the Code of Civil Procedure.

“**Section 92 of the CPC. Public Charitie**s.-(1) In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the Advocate-General, or two or more persons having an interest in the trust and having obtained the 2 [leave of the Court], may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the State Government within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate to obtain a decree:

(a) removing any trustee;

(b) appointing a new trustee;

(c) vesting any property in a trustee;

(cc) directing a trustee who has been removed or a person who has ceased to be a trustee, to deliver possession of any trust property in his possession to the person entitled to the possession of such property]

d) directing accounts and inquiries;

(e) declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;

(f) authorizing the whole or any part of the trust property to be let, sold, mortgaged or exchanged;

(g) settling a scheme; or

(h) granting such further or other relief as the nature of the case may require.

(2) Save as provided by the Religious Endowments Act, 1863 (XX of 1863), 4 [or by any corresponding law in force in 5 [the territories which, immediately before the 1st November, 1956, were comprised in Part B States]], no suit claiming any of the reliefs specified in sub-section (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with the provisions of that sub-section.

[(3) The Court may alter the original purposes of an express or constructive trust created for public purposes of a charitable or religious nature and allow the property or income of such trust or any portion thereof to be applied cy pres in one or more of the following circumstances, namely :

(a) where the original purposes of the trust, in whole or in part,

(i) have been, as far as may be, fulfilled; or

(ii) cannot be carried out at all, or cannot be carried out according to the directions given in the instrument creating the trust or, where there is no such instrument, according to the spirit of the trust; or

(b) where the original purposes of the trust provide a use for a part only of the property available by virtue of the trust; or

(c) where the property available by virtue of the trust and other property applicable for similar purposes can be more effectively used in conjunction with, and to that end can suitably be made applicable to any other purpose, regard being had to the spirit of the trust and its applicability to common purposes; or

(d) where the original purposes, in whole or in part, were laid down by reference to an area which then was, but has since ceased to be, a unit for such purposes; or

(e) where the original purposes, in whole or in part, have, since they were laid down,

(i) been adequately provided for by other means, or

(ii) ceased, as being useless or harmful to the community, of

(iii) ceased to be, in law, charitable, or

(iv) ceased in any other way to provide a suitable and effective method of using the property available by virtue of the trust, regard being had to the spirit of the trust.]"

23. Section 35(2) of the Advocates Act as well as Section 37 of the Advocates Act contemplate a crucial role for the Advocate General in proceedings against the advocates for misconduct.

"**Section 35 (2). Punishment of advocates for misconduct.**-(2) The disciplinary committee of a State Bar Council 2[***] shall fix a date for the hearing of the case and shall cause a notice thereof to be given to the advocate concerned and to the Advocate-General of the State.

Section 37. Appeal to the Bar Council of India.-(1) Any person aggrieved by an order of the disciplinary committee of a State Bar Council made 1[under section 35] 2[or the Advocate-General of the State] may, within sixty days of the date of the communication of the order to him, prefer an appeal to the Bar Council of India.

(2) Every such appeal shall be heard by the disciplinary committee of the Bar Council of India which may pass such order 2[(including an order varying the punishment awarded by the disciplinary committee of the State Bar Council)] thereon as it deems fit:

[Provided that no order of the disciplinary committee of the State Bar Council shall be varied by the disciplinary committee of the Bar Council of India so as to prejudicially affect the person aggrieved without giving him reasonable opportunity of being heard.]"

24. The role of Advocate General of the State in

disciplinary proceedings against the advocates arose for consideration before the Supreme Court in **Adi Pherozshah Gandi v. H.M. Seervai, Advocate-General, Maharashtra, Bombay** reported at **1970 (2) SCC 484**. The Supreme Court in **Adi Pherozshah Gandi (supra)** adverted to the role of the Advocate General under the Advocates Act as well as Constitution held as under:

"16. Lord Denning referred to the definition of James, L.J. in *In Re Sidebotham Ex. p. Sidebotham* and said that if the definition were to be regarded as exhaustive and were held applicable, an "aggrieved person" would be only a person who was a party to a *lis*, a controvery *inter partes* and had a decision given against him. The Attorney-General would not come within this restricted definition as there was no suit between two parties when disciplinary proceedings were started *ex mero motu* by the court or at the instance of the Attorney-General or some one against a legal practitioner. But the definition of James, L.J., was not exhaustive and the words "person aggrieved" were of wide import and should not be subjected to a restricted interpretation. They included not a busy body but certainly one who had a genuine grievance because an order had been made which prejudicially affected his interests. Posing the question "did the Attorney-General have a sufficient interest", the Judicial Committee answered he had. The Attorney-General in a Colony represented the Crown as the guardian of public interest and it was his duty to bring before the Judge a case of misconduct to warrant action. Then Lord Denning proceeded to distinguish two kinds of cases to determine if the Attorney-General would be a "person aggrieved". The first was a case where the Judge acquitted the practitioner. In such a case no appeal was open to the Attorney-General under the Supreme Court Ordinance, and Lord Denning added "He has done his duty and is not aggrieved". In other words, he did not come within the words of the 31st section of the Order in Council. The Attorney-General could not, therefore, ask for special leave as a "person aggrieved". But the case was different if the Judge found the practitioner guilty and a court of appeal reversed the decision on a ground which went to the root of the jurisdiction of the judge or was otherwise a point in which the public interest was involved. In that case the Attorney-General was a "person aggrieved".

(emphasis supplied)

17. The observations of Lord Denning clearly meant that the Attorney-General could not pose as a "person aggrieved" to seek to bring a simple case of acquittal for reversal by the Judicial Committee under the 31st section of the Order in Council for he could not be regarded as a "person aggrieved". The remark was made perhaps to repel an argument that every case of acquittal would make the Attorney-General an "aggrieved person". Lord Denning said that this was not the true position. The Attorney-General could only move the Judge and there his duty ended. The law gave him no express right of appeal and he could not claim to be a "person aggrieved". He could only invoke the 31st Section if he could make out his grievance and it was found to be as a person representing the Crown and the guardian of public interest seeking to get reversed a decision, which struck at the root of the jurisdiction of the disciplinary Judge, by denying that the Deputy Judge was exercising judicial power under Section 7 of the Supreme Court Ordinance. The Crown was aggrieved by this decision and the Attorney-General representing the Crown was an "aggrieved person".

27. The Advocates Act was passed to amend and consolidate the law relating to legal practitioners and to provide for the constitution of Bar Councils and an All-India Bar. It replaced the earlier Acts governing the legal profession particularly the Indian Bar Councils Act, 1926. Prior to the passing of the Advocates Act, the enrolment and discipline of legal practitioners was in the hands of the courts and in the case of the advocates the High Court entertained and determined case of misconduct against them. Now this jurisdiction is completely transferred to the Bar Councils of the States and the Bar Council of India. In the Bar Councils of the States (except Delhi) the Advocate-General of the State is an ex officio member. In Delhi the Additional Solicitor-General takes the place of the Advocate-General. Other members are elected. In the Bar Council of India, the Attorney-General and the Solicitor-General are ex officio members and the other members are elected one each by the State Bar Councils. In the Union Territory of Delhi the Additional Solicitor-General is ex officio member. The functions of the Advocate-General are not different from those of the other members insofar as the affairs of the Bar Council are concerned. The only matters where the Advocates-General, the Attorney-General and the Solicitor-General and the Additional Solicitor-General are mentioned are these. The Act gives a right of pre-audience over other advocates to the Attorney-General, the Solicitor-General, the Additional Solicitor-General and the Advocate-General. The right of pre-audience gives them a standing for hearing of cases but does not

confer on them any other rights. The magniloquent phrases such as Leader of the Bar, keeper of the Conscience of the Bar have no meaning neither now, nor before under the Bar Councils Act of 1926. They are just honorific titles given by courtesy but are not grounded on law. Indeed the keepers of the Conscience of the Bar are the Bar Councils and the Leader of the Bar may be someone who may even have refused to accept Advocate-Generalship.

29. The disciplinary proceedings commence both before the State Bar Council and the Bar Council of India on a complaint or otherwise made respectively to the State Bar Council or the Bar Council of India. The Bar Councils in either case refer them for disposal to their respective Disciplinary Committees. The Disciplinary Committee in each case can reject the complaint summarily, but if it proceeds to hear the matter further it causes a notice thereof to be sent to the advocate concerned and to the Advocate-General of the State or the Attorney-General of India, as the case may be. The Disciplinary Committee after giving the advocate concerned and the Advocate-General or the Attorney-General, as the case may be, an opportunity to be heard, makes an order either dismissing the complaint or where the proceedings are found to be not fit for consideration and are started at the instance of the Bar Council ordering that they may be filed. The committee may, if the advocate is found guilty, reprimand him or suspend him from practice for such period as it deems fit, or may remove him altogether from the roll of advocates. The Advocate-General or the Attorney-General, as the case may be, need not appear personally but may appear through an advocate.

30. From the decision of the Disciplinary Committee of the State Bar Council an appeal lies to the Bar Council of India which is heard by the Disciplinary Committee of the Bar Council of India which may pass such orders thereon as it deems fit. From the decision of the Disciplinary Committee of the Bar Council of India an appeal lies to this Court. The appeals can be taken by a “person aggrieved” by the order of the Disciplinary Committee of the State Bar Council or the Bar Council of India, as the case may be. It is in this context that we have to determine whether the Advocate-General can be regarded as a “person aggrieved”.

31. In view of the common roll maintained by the Bar Council of India it appears to me that if anybody represents the Bar it would be the Bar Council of India and in the case of the States, the Bar Council of the State. The Advocate-General has no right to speak on behalf of the body of the advocates as if he represented them and their interests. Neither is this

privilege expressly conferred on him, nor can it be implied from any of the provisions of the Act. The question, therefore, arises: in what capacity does the Advocate-General appear before a Disciplinary Committee? It is obvious that he is not a prosecutor on behalf of the Bar Council because if he was one, his presence would be more necessary at the stage at which the Disciplinary Committee considers in limine to decide whether the matter should be proceeded with at all. The next question is: why is he summoned at all? In my opinion, the Advocate-General is not noticed and brought before the court because he is a prosecutor or is to be bound by the order of the Disciplinary Committee. He represents no interest there and is heard merely because he is the chief counsel of the State and therefore his assistance at the hearing is useful. The fact that he need not appear by himself and may appear through an advocate renders his position a little weaker in the matter of his grievance. If he is to be treated as a “person aggrieved” he must argue the case himself. The fact that he appears through a counsel shows that the intention is merely to have the opinion of a person who is neither siding with the complainant nor with the advocate and who will thus have unbiased and impartial approach to the case. The Advocate-General is generally a lawyer of some standing having made a mark in the profession and his contribution to the deliberations of the Disciplinary Committee is welcome because thus the Disciplinary Committee is helped to reach a proper conclusion."

25. Vital functions are vested in the office of the Advocate General under Section 15(1)(b) of the Contempt of Courts Act. The said provisions is extracted hereunder:

“**Section 15**. **Cognizance of criminal contempt in other cases-**(1) In the case of a criminal contempt, other than a contempt referred to in section 14, the Supreme Court or the High Court may take action on its own motion or on a motion made by—

(a) the Advocate-General, or

(b) any other person, with the consent in writing of the Advocate-General, 1 [or]

[(c) in relation to the High Court for the Union territory of Delhi, such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf, or any other person, with the consent in

writing of such Law Officer.]

(2) In the case of any criminal contempt of a subordinate court, the High Court may take action on a reference made to it by the subordinate court or on a motion made by the Advocate-General or, in relation to a Union territory, by such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf.

(3) Every motion or reference made under this section shall specify the contempt of which the person charged is alleged to be guilty.

Explanation.—In this section, the expression "Advocate-General" means,—

(a) in relation to the Supreme Court, the Attorney-General or the Solicitor-General;

(b) in relation to the High Court, the Advocate-General of the State or any of the States for which the High Court has been established;

(c) in relation to the court of a Judicial Commissioner, such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf."

26. Highlighting the importance of the role of the Advocate General in the aforesaid proceedings the Supreme Court in **S.K. Sarkar v. V.C. Misra**[1], held as under:

"**19.** ...The whole object of prescribing these procedural modes of taking cognizance under Section 15 of the Act was to safeguard the valuable time of the High Court or the Supreme Court from being wasted by frivolous complaints of contempt of court. Frequent use of this suo motu power on the information furnished by an incompetent petition, may render these procedural safeguards provided in sub-section (2), otiose. In such cases, the High Court may be well advised to avail of the advice and assistance of the Advocate-General before initiating proceedings. In this connection, the Court referred to the observations of Sanyal Committee appointed to examine this question where it was observed.

"In the case of criminal contempt, not being contempt committed in the face

1 **(1981) 2 SCR 331**

of the Court, we are of the opinion that would lighten the burden of the court, without in any way interfering with the sanctity of the administration of justice, if action is taken on a motion by some other agency. Such a course of action would give considerable assurance to the individual charged and the public at large. Indeed, some High Courts have already made rules for the association of the Advocate-General in some categories of cases at least…..”It was the the practice that except where the Court feels inclined to take action suo motu parties were entitled to move only by the consent if no justifiable reason was given in an appropriate case and such consent was refused can it be said that it would not be proper for the Court to investigate the same?”

27. One aspect of this support system which has to provided by the State Government is the nature of appointments to the office of the Advocate General and the Law Officers Establishment. These appointments and the service rules have a bearing on the administrative efficiency of the staff. This in turn determines the overall performance of the office of the Advocate General. Service Rules of the said staff have to thus be structured in a manner to enhance to constitutional functions of the office and not to hamper the same. Without aforesaid support of the State Government the Advocate General will not be able to exercise control over the staff and to promote the cause of law and justice to which alone the State Government is wedded and for which alone the office exists.

28. The State Government has to create the appropriate conditions and conducive environment to enable the Advocate General to perform the constitutional and statutory duties of the office. The aspect of the support of the State Government which arises in the current

controversy is with regard to the administration of the office of the Advocate General. The State Government shall ensure that the Advocate General has supervisory control as well as disciplinary powers over the staff in the office of the Advocate General and State Law Officers Establishment.

29. The staff of the Advocate General and the Law Officer establishment play a decisive role in protecting the independence of the high constitutional office and ensuring that there is no impediment in discharge of the constitutional functions in the office so vested by Article 165 of the Constitution of India.

30. The ministerial and other staff in the office of the Advocate General and the legal law officers establishment are governed and regulated by the Uttar Pradesh Advocate General and Law Officers Establishment Service (Fourth Amendment) Rules, 2022. The aforesaid rules were amended on 27.12.2022.

31. Service rules are created in order to rationalize the functioning of the department and also establish a clear hierarchy of authorities which is essential for efficient administration. Arbitrary service rules can lead to loss of administrative efficiency and even cause the breakdown of functioning of the department. The service rules are designed to ensure that the disciplinary power vests in the authority which is endowed with the responsibility of running the department. It is a fundamental principle of good administration to vest the power and responsibility

in the same office.

32. The amended impugned service Rules create a dichotomy where the constitutional responsibility remains in the Advocate General but administrative power to appoint, supervise & discipline the staff resides in the Legal Remembrancer/Principal Secretary (Law). The consequences of the service rules are not far to seek. The service rules will create authorities times working at cross purposes. This will neither be the interest of department nor in public interest. The impugned service Rules will cause a loss of administrative control of the Advocate General over his own office. The impugned service Rules will result in a disarray in the affairs of administration of the office. Confidentiality of the functioning of the office of the Advocate General will be breached and the incumbent will not be in a position to take administrative actions against defaulting officials in the department.

33. The amended rules clearly degrade the office of the Advocate General and render it vulnerable to outside pressures and extraneous influences besides compromising the entire functioning of the office of the Advocate General. In the long run it is the cause of law constitutional order and justice which will suffer irremediably as a result of the aforesaid amendments.

34. The amended Rules change the appointing authority on a number of posts in the office of the Advocate General. The appointing authority and the disciplinary authority under the pre-amended rules of the aforesaid

officials was the Advocate General. However, new set up under the amended rules the Legal Remembrancer/ Principal Secretary (Law), Government of Uttar Pradesh has been made the appointing and disciplinary authority and the Advocate General has been removed entirely from the picture. The offending amendments are contrary to the constitutional provisions and degrade the office of the Advocate General.

35. The amended Rules have far reaching consequences on the functioning of the office of the Advocate General and the constitutional status of the office of the Advocate General. The Legal Remembrancer/ Principal Secretary (Law), Government of Uttar Pradesh, who has been made the appointing authority of the staff of the office of the Advocate General, is an officer of the State Government and clearly subordinate to the constitutional office of Advocate General. However, under the dispensation created by the amended rules, the Legal Remembrancer/ Principal Secretary (Law), Government of Uttar Pradesh shall have full control over the office of the Advocate General. This will create a serious impediments in the functioning of the office of the Advocate General and maintaining the confidentiality of the communications and legal advice tendered by the Advocate General.

36. Since a parallel disciplinary authority has been set up by the amended rules, the rules entail a complete loss of independence of the office of the Advocate General. This in turn will have cascading consequences. The ability of

the Advocate General to give independent advice regardless the pulls of vested interests or pressures of political expediency will be compromised.

37. The authority of the Advocate General has clearly been dented by the impugned Rules to the extent any incumbent will not be able to discharge the constitutional duties of the office. The said rules are in violation of Article 165 of the Constitution of India as they prevent the Advocate General from discharging his constitutional functions.

38. There is another aspect to the controversy which is the unreasonable classification created by the impugned Rules. It is interesting to see that the Advocate General is retained as the appointing authority of the most subordinate posts. However, the Legal Remembrancer/Principal Secretary (Law), who is subordinate to the Advocate General in the order of precedent has been made the appointing authority of all senior posts in the office of the Advocate General. The said classification is unreasonable and arbitrary which does not subserve the object which is sought to be achieved and is violative of Article 14 of the Constitution of India.

39. In this manner the disciplinary powers of the Advocate General over the aforesaid officials have been taken away. The said officials work to support the constitutional duties performed by the Advocate General but are not

answerable to him. This is a recipe for a complete disorder in the administration of the office of the Advocate General.

40. In this regard the mischief played by the Rules can be brought out by the following example. The Advocate General is retained as the appointing authority and disciplinary authority of the posts of Watchman, Bundle lifter and Sweeper. While the Legal Remembrancer/Principal Secretary (Law) is made the appointing authority of the Research Assistant, Computer Operator-Grade A, Computer Operator Grade-B, Additional Private Secretary, Review Officer, Review Officer (Accounts).

41. The petty mindedness shown by the concerned officials in creation of the rules may yield some short term gains or low level satisfaction; however it eventually causes lasting damage to a high constitutional office charged with important functions of the State. It is the responsibility of the State Government to always ensure that the precepts constitutional morality are not sacrified by petty minded officials for narrow personal goals or expedient political interests. Degradation of the office of the Advocate General will adversely impact the rule of law and the cause of justice to common citizens.

42. The unreasonable classification made by the impugned Rules is also in the teeth of law laid down by the Supreme Court in **Subramanian Swamy v. Director,**

Central Bureau of Investigation and another reported at **(2014) 8 SCC 682**.

"**39.** Article 14 of the Constitution incorporates concept of equality and equal protection of laws. The provisions of Article 14 have engaged the attention of this Court from time to time. The plethora of cases dealing with Article 14 has culled out principles applicable to aspects which commonly arise under this article. Among those, may be mentioned, the decisions of this Court in *Charanjit Lal Chowdhury* [*Charanjit Lal Chowdhury* v. *Union of India*, 1950 SCC 833 : AIR 1951 SC 41 : 1950 SCR 869] , *F.N. Balsara* [*State of Bombay* v. *F.N. Balsara*, 1951 SCC 860 : AIR 1951 SC 318 : 1951 Cri LJ 1361 : 1951 SCR 682] , *Anwar Ali Sarkar* [*State of W.B.* v. *Anwar Ali Sarkar*, (1952) 1 SCC 1 : AIR 1952 SC 75 : 1952 Cri LJ 510 : 1952 SCR 284] , *Kathi Raning Rawat* [*Kathi Raning Rawat* v. *State of Saurashtra*, (1952) 1 SCC 215 : AIR 1952 SC 123 : 1952 Cri LJ 805 : 1952 SCR 435] , *Lachmandas Kewalram Ahuja* [*Lachmandas Kewalram Ahuja* v. *State of Bombay*, (1952) 1 SCC 726 : AIR 1952 SC 235 : 1952 Cri LJ 1167 : 1952 SCR 710] , *Syed Qasim Razvi* [*Syed Qasim Razvi* v. *State of Hyderabad*, AIR 1953 SC 156 : 1953 Cri LJ 862 : 1953 SCR 589] , *Habeeb Mohamed* [*Habeeb Mohamed* v. *State of Hyderabad*, AIR 1953 SC 287 : 1953 Cri LJ 1158 : 1953 SCR 661] , *Kedar Nath Bajoria* [*Kedar Nath Bajoria* v. *State of W.B.*, AIR 1953 SC 404 : 1953 Cri LJ 1621 : 1954 SCR 30] and innovated to even associate the members of this Court to contribute their *V.M. Syed Mohammad & Co.* [*V.M. Syed Mohammad & Co.* v. *State of Andhra*, AIR 1954 SC 314 : 1954 SCR 1117] Most of the above decisions were considered in *Budhan Choudhry* [*Budhan Choudhry* v. *State of Bihar*, AIR 1955 SC 191 : 1955 Cri LJ 374 : (1955) 1 SCR 1045] .

40. This Court exposited the ambit and scope of Article 14 in *Budhan Choudhry* [*Budhan Choudhry* v. *State of Bihar*, AIR 1955 SC 191 : 1955 Cri LJ 374 : (1955) 1 SCR 1045] as follows:

> "*5*. … It is now well established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (*i*) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (*ii*) that that differentia must have a rational

relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases; namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well established by the decisions of this Court that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure."

41. In *Ram Krishna Dalmia* [*Ram Krishna Dalmia* v. *S.R. Tendolkar*, AIR 1958 SC 538 : 1959 SCR 279] , the Constitution Bench of five Judges further culled out the following principles enunciated in the above cases:

"*11*. … (*a*) that a law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself;

(*b*) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;

(*c*) that it must be presumed that the legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds;

(*d*) that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest;

(*e*) that in order to sustain the presumption of constitutionality the court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation; and

(*f*) that while good faith and knowledge of the existing conditions on the part of a legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of

always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation."

42. In *Ram Krishna Dalmia* [*Ram Krishna Dalmia* v. *S.R. Tendolkar*, AIR 1958 SC 538 : 1959 SCR 279] , it was emphasised that:

> "*11*. … the above principles will have to be constantly borne in mind by the court when it is called upon to adjudge the constitutionality of any particular law attacked as discriminatory and violative of the equal protection of laws."

43. Having culled out the above principles, the Constitution Bench in *Ram Krishna Dalmia* [*Ram Krishna Dalmia* v. *S.R. Tendolkar*, AIR 1958 SC 538 : 1959 SCR 279] , further observed that the statute which may come up for consideration on the question of its validity under Article 14 of the Constitution may be placed in one or other of the following five classes:

> "*12*. … (*i*) A statute may itself indicate the persons or things to whom its provisions are intended to apply and the basis of the classification of such persons or things may appear on the face of the statute or may be gathered from the surrounding circumstances known to or brought to the notice of the court. In determining the validity or otherwise of such a statute the court has to examine whether such classification is or can be reasonably regarded as based upon some differentia which distinguishes such persons or things grouped together from those left out of the group and whether such differentia has a reasonable relation to the object sought to be achieved by the statute, no matter whether the provisions of the statute are intended to apply only to a particular person or thing or only to a certain class of persons or things. Where the court finds that the classification satisfies the tests, the court will uphold the validity of the law.
>
> (*ii*) A statute may direct its provisions against one individual person or thing or to several individual persons or things but no reasonable basis of classification may appear on the face of it or be deducible from the surrounding circumstances, or matters of common knowledge. In such a case the court will strike down the law as an instance of naked discrimination….
>
> (*iii*) A statute may not make any classification of the persons or things

for the purpose of applying its provisions but may leave it to the discretion of the Government to select and classify persons or things to whom its provisions are to apply. In determining the question of the validity or otherwise of such a statute the court will not strike down the law out of hand only because no classification appears on its face or because a discretion is given to the Government to make the selection or classification but will go on to examine and ascertain if the statute has laid down any principle or policy for the guidance of the exercise of discretion by the Government in the matter of the selection or classification. After such scrutiny the court will strike down the statute if it does not lay down any principle or policy for guiding the exercise of discretion by the Government in the matter of selection or classification, on the ground that the statute provides for the delegation of arbitrary and uncontrolled power to the Government so as to enable it to discriminate between persons or things similarly situate and that, therefore, the discrimination is inherent in the statute itself. In such a case the court will strike down both the law as well as the executive action taken under such law….

(*iv*) A statute may not make a classification of the persons or things for the purpose of applying its provisions and may leave it to the discretion of the Government to select and classify the persons or things to whom its provisions are to apply but may at the same time lay down a policy or principle for the guidance of the exercise of discretion by the Government in the matter of such selection or classification….

(*v*) A statute may not make a classification of the persons or things to whom their provisions are intended to apply and leave it to the discretion of the Government to select or classify the persons or things for applying those provisions according to the policy or the principle laid down by the statute itself for guidance of the exercise of discretion by the Government in the matter of such selection or classification. If the Government in making the selection or classification does not proceed on or follow such policy or principle … that in such a case the executive action but not the statute should be condemned as unconstitutional.”

44. In *Vithal Rao* [*Nagpur Improvement Trust* v. *Vithal Rao*, (1973) 1 SCC 500] , the five-Judge Constitution Bench had an occasion to consider the test of reasonableness under Article 14 of the Constitution. It noted that:

> "*26*. … the State can make a reasonable classification for the purpose of legislation [and] that the classification in order to be reasonable must satisfy two tests: (*i*) the classification must be founded on intelligible differentia, and (*ii*) the differentia must have a rational relation with the object sought to be achieved by the legislation in question."

The Court emphasised that in this regard object itself should be lawful and it cannot be discriminatory. If the object is to discriminate against one section of the minority, the discrimination cannot be justified on the ground that there is a reasonable classification because it has rational relation to the object sought to be achieved.

45. The constitutionality of the Special Courts Bill, 1978 came up for consideration in *Special Courts Bill, 1978, In re* [(1979) 1 SCC 380] as the President of India made a reference to this Court under Article 143(1) of the Constitution for consideration of the question whether the "Special Courts Bill" or any of its provisions, if enacted would be constitutionally invalid. The seven-Judge Constitution Bench dealt with the scope of Article 14 of the Constitution. Noticing the earlier decisions of this Court in *Budhan Choudhry* [*Budhan Choudhry* v. *State of Bihar*, AIR 1955 SC 191 : 1955 Cri LJ 374 : (1955) 1 SCR 1045] , *Ram Krishna Dalmia* [*Ram Krishna Dalmia* v. *S.R. Tendolkar*, AIR 1958 SC 538 : 1959 SCR 279] , *C.I. Emden* [*C.I. Emden* v. *State of U.P.*, AIR 1960 SC 548 : 1960 Cri LJ 729 : (1960) 2 SCR 592] , *Kangshari Haldar* [*Kangshari Haldar* v. *State of W.B.*, AIR 1960 SC 457 : 1960 Cri LJ 654 : (1960) 2 SCR 646] , *Jyoti Pershad* [*Jyoti Pershad* v. *UT of Delhi*, AIR 1961 SC 1602 : (1962) 2 SCR 125] and *Shri Ambica Mills Ltd.* [*State of Gujarat* v. *Shri Ambica Mills Ltd.*, (1974) 4 SCC 656 : 1974 SCC (L&S) 381 : (1974) 3 SCR 760] , in the majority judgment the then Chief Justice Y.V. Chandrachud, inter alia, exposited the following propositions relating to Article 14:

> "(*1*)***
>
> (*2*) The State, in the exercise of its governmental power, has of necessity to make laws operating differently on different groups or classes of persons within its territory to attain particular ends in giving effect to its policies, and it must possess for that purpose large powers of distinguishing and classifying persons or things to be subjected to such laws.

(3) The constitutional command to the State to afford equal protection of its laws sets a goal not attainable by the invention and application of a precise formula. Therefore, classification need not be constituted by an exact or scientific exclusion or inclusion of persons or things. The courts should not insist on delusive exactness or apply doctrinaire tests for determining the validity of classification in any given case. Classification is justified if it is not palpably arbitrary.

(4) The principle underlying the guarantee of Article 14 is not that the same rules of law should be applicable to all persons within the Indian territory or that the same remedies should be made available to them irrespective of differences of circumstances. It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation, and there should be no discrimination between one person and another if as regards the subject-matter of the legislation their position is substantially the same.

(*5*) By the process of classification, the State has the power of determining who should be regarded as a class for purposes of legislation and in relation to a law enacted on a particular subject. This power, no doubt, in some degree is likely to produce some inequality; but if a law deals with the liberties of a number of well-defined classes, it is not open to the charge of denial of equal protection on the ground that it has no application to other persons. Classification thus means segregation in classes which have a systematic relation, usually found in common properties and characteristics. It postulates a rational basis and does not mean herding together of certain persons and classes arbitrarily.

(*6*) The law can make and set apart the classes according to the needs and exigencies of the society and as suggested by experience. It can recognise even degree of evil, but the classification should never be arbitrary, artificial or evasive.

(*7*) The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the

test, two conditions must be fulfilled, namely, (*1*) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others, and (*2*) that that differentia must have a rational relation to the object sought to be achieved by the Act.

(*8*) The differentia which is the basis of the classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between them. In short, while Article 14 forbids class discrimination by conferring privileges or imposing liabilities upon persons arbitrarily selected out of a large number of other persons similarly situated in relation to the privileges sought to be conferred or the liabilities proposed to be imposed, it does not forbid classification for the purpose of legislation, provided such classification is not arbitrary in the sense abovementioned.

(*9*) If the legislative policy is clear and definite and as an effective method of carrying out that policy a discretion is vested by the statute upon a body of administrators or officers to make selective application of the law to certain classes or groups of persons, the statute itself cannot be condemned as a piece of discriminatory legislation. In such cases, the power given to the executive body would import a duty on it to classify the subject-matter of legislation in accordance with the objective indicated in the statute. If the administrative body proceeds to classify persons or things on a basis which has no rational relation to the objective of the legislature, its action can be annulled as offending against the equal protection clause. On the other hand, if the statute itself does not disclose a definite policy or objective and it confers authority on another to make selection at its pleasure, the statute would be held on the face of it to be discriminatory, irrespective of the way in which it is applied.

(*10*) Whether a law conferring discretionary powers on an administrative authority is constitutionally valid or not should not be determined on the assumption that such authority will act in an arbitrary manner in exercising the discretion committed to it. Abuse of power given by law does occur; but the validity of the law cannot be contested because of such an apprehension. Discretionary power is not necessarily a discriminatory power.

(*11*) Classification necessarily implies the making of a distinction or

> discrimination between persons classified and those who are not members of that class. It is the essence of a classification that upon the class are cast duties and burdens different from those resting upon the general public. Indeed, the very idea of classification is that of inequality, so that it goes without saying that the mere fact of inequality in no manner determines the matter of constitutionality.
>
> (*12*) Whether an enactment providing for special procedure for the trial of certain offences is or is not discriminatory and violative of Article 14 must be determined in each case as it arises, for, no general rule applicable to all cases can safely be laid down. A practical assessment of the operation of the law in the particular circumstances is necessary.
>
> (*13*) A rule of procedure laid down by law comes as much within the purview of Article 14 as any rule of substantive law and it is necessary that all litigants, who are similarly situated, are able to avail themselves of the same procedural rights for relief and for defence with like protection and without discrimination."

46. In *Nergesh Meerza* [*Air India* v. *Nergesh Meerza*, (1981) 4 SCC 335 : 1981 SCC (L&S) 599] , the three-Judge Bench of this Court while dealing with the constitutional validity of Regulation 46(*i*)(*c*) of the Air India Employees' Service Regulations (referred to as "the AI Regulations") held that certain conditions mentioned in the Regulations may not be violative of Article 14 on the ground of discrimination but if it is proved that the conditions laid down are entirely unreasonable and absolutely arbitrary, then the provisions will have to be struck down. With regard to due process clause in the American Constitution and Article 14 of our Constitution, this Court referred to *Anwar Ali Sarkar* [*State of W.B.* v. *Anwar Ali Sarkar*, (1952) 1 SCC 1 : AIR 1952 SC 75 : 1952 Cri LJ 510 : 1952 SCR 284] , and observed that the due process clause in the American Constitution could not apply to our Constitution. The Court also referred to *A.S. Krishna* [*A.S. Krishna* v. *State of Madras*, AIR 1957 SC 297 : 1957 Cri LJ 409 : 1957 SCR 399] wherein Venkatarama Ayyar, J. observed:

> "*13*. … The law would thus appear to be based on the due process clause, and it is extremely doubtful whether it can have application under our Constitution."

47. In *D.S. Nakara* [*D.S. Nakara* v. *Union of India*, (1983) 1 SCC 305 : 1983

SCC (L&S) 145] , the Constitution Bench of this Court had an occasion to consider the scope, content and meaning of Article 14. The Court referred to earlier decisions of this Court and in para 15, the Court observed:

> "*15*. Thus the fundamental principle is that Article 14 forbids class legislation but permits reasonable classification for the purpose of legislation which classification must satisfy the twin tests of classification being founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and that differentia must have a rational nexus to the object sought to be achieved by the statute in question."

43. Before parting we would like to notice that no satisfactory response to the above issues from the State Government during the arguments has been given. The only justification provided in the impugned Rules by Shri M.C. Chaturvedi, learned Additional Advocate General is that the Advocate General has been very busy and over committed as a result of which the aforesaid rules have been brought into existence. The argument is liable to be rejected at the outset, and is indeed amusing to say the least.

44. All constitutional functionaries are highly committed and often have paucity of time to the nature of the constitutional functions. This cannot be a justifiable reason for degrading the constitution office itself by taking away the essential functions of the office and vesting them in a officer lower in the order of precedence.

45. In the light of the preceding discussion we declare the impugned Rules ultra vires and is violative of Article 14 and Article 165 of the Constitution of India. The

impugned amended service Rules insofar as they replace the Advocate General with the Principal Secretary (Law) as the appointing authority of various posts are struck down.

46. The impugned service rules i.e. Uttar Pradesh Advocate General and Law Officers Establishment Service (Fourth Amendment) Rules, 2022 (Annexure No.5 to the writ petition only to the extent prayed for are liable to be quashed and are quashed.

47. The earlier Rules/arrnagements existing prior to the notification of the amended Rules shall continue to operate till fresh Rules shall be framed consistent with the observations made in the body of the judgement. The State Government shall always ensure that the sanctity of the office of the Advocate General is maintained and the prestige of the incumbent is upheld.

48. The writ petition is liable to be allowed and is allowed.

Order Date :- 16.10.2023
RKK/RK

(Ashutosh Srivastava,J.) (Pritinker Diwaker, C.J.)