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IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

THE HON'BLE THE CHIEF JUSTICE SRI RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE SRI JUSTICE ALOK KUMAR VERMA

WRIT PETITION (S/B) No. 407 OF 2020

27TH SEPTEMBER, 2021

Between:

Sanjiv Chaturvedi.Petitioner

and

Union of India and others.Respondents

Counsel for the petitioner. : Mr. Sanjiv Chaturvedi, the petitioner, party-in-person.

Counsel for the respondent nos. 1 to 3. : Mr. V.K. Kapruwan, the learned Standing Counsel for the Union of India.

Counsel for the respondent no. 4 : Mr. N.S. Pundir, the learned counsel.

The Court made the following:

JUDGMENT : (per Hon'ble The Chief Justice Sri Raghvendra Singh Chauhan)

The present Writ Petition was filed by Mr. Sanjiv Chaturvedi through a counsel, namely Mr. Sandeep Tiwari, before this Court on 12.12.2020. While

presenting the Writ Petition, a note mentions the fact that Mr. Sudarshan Goel, the learned Senior Counsel, will appear and argue the matter on behalf of the petitioner. Therefore, the Writ Petition was filed through an Advocate. Moreover, it was clearly indicated that Mr. Sudarshan Goel, the learned Senior Counsel, would appear and argue on behalf of the petitioner.

2. However, Mr. Sanjiv Chaturvedi, the petitioner, has appeared in person before this Court. Therefore, this Court has asked Mr. Sanjiv Chaturvedi that since he has already appointed an Advocate on his behalf, on what basis he seeks to argue this case as a party-in-person?

3. Mr. Sanjiv Chaturvedi insisted that he would like to argue this Writ Petition as party-in-person. He further pleaded that the High Court of Uttarakhand Party-in-Person Rules, 2020 (in short "*the Rules*") are inapplicable in the present case, as the Rules came into force on 26.12.2020, and the Writ Petition was filed on 12.12.2020.

4. According to Rule 14 of the Rules, the Rules are not applicable to the pending matters in the High Court. Moreover, Rule 13 clearly states that the Court may permit a party to appear and to conduct the proceedings in the Court in-person, or may direct such a party to appear before the Party-in-Person Committee. Therefore, Mr. Sanjiv Chaturvedi insisted that he be permitted to argue his case in person.

5. This Court further informed Mr. Sanjiv Chaturvedi that in case he is not happy with his present counsel, either Mr. Sandeep Tiwari or Mr. Sudharshan Goel, this Court would appoint a Senior Advocate of this Court to argue on his behalf. For, this Court is of the opinion that the Senior Advocates, with their vast knowledge and experience, are best suited to represent the rights and interests of a party-in-person. However, to this suggestion, Mr. Sanjiv Chaturvedi blatantly stated that he has no faith in any of the counsel of the Uttarakhand High Court. Therefore, he would not like any counsel to be appointed by this Court to assist the Court on his behalf.

6. This Court further pointed out that this case has a chequered history, where Mr. Sanjiv Chaturvedi has filed a number of OAs or Petitions before the Central Administrative Tribunal, the High Court and the Hon'ble Supreme Court. Moreover, these series of litigations would need to be examined in order to understand the basic thrust of the present case that the Chairman of the Principal Bench, Delhi of the Central Administrative Tribunal, is prejudiced against Mr. Sanjiv Chaturvedi. Moreover, certain legal issues may arise with regard to the procedure for empanelment for the post of Joint Secretary, which is assailed in the OA. Thus, this Court was of the opinion that in order to assist this Court, both on facts and law, it would be in the interest of justice to appoint a Senior Advocate of this Court on behalf of the petitioner.

7. Mr. Sanjiv Chaturvedi claimed that he has been permitted to argue not only before the Central Administrative Tribunal, but also before other High Courts, and even before the Hon'ble Supreme Court, as party-in-person. Therefore, according to him, he is well versed with the intricacies of law, and is well aware of the facts of his case. Therefore, he continuously insisted

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that he should be permitted to argue his case as party-in-person.

8. Heard Mr. Sanjiv Chaturvedi, the party-in-person.

9. The issue before this Court is whether a party-in-person can insist that he or she be allowed to argue in person, or not? Or whether it is well within the discretionary power of the Court to allow, or not to allow a person to argue before the Court?

10. Wanting to reform the judicial administration in India in the post-Independence period, and wanting to custom-tailor the judicial administration to the needs of its time, in 1961, the Parliament enacted the Advocates Act, 1961 (in short "*the Act*") in order to consolidate the law relating to legal practitioners, and to provide for the constitution of Bar Councils and an All-India Bar. Section 2(a) of the Act defines the word "advocate" as meaning an Advocate entered in any roll under the provisions of the Act. Section 2(i) defines the word "legal practitioner" as meaning an Advocate (or Vakil) of any High Court, a pleader, mukhtar or revenue agent.

11. Chapter III of the Act deals with admission and enrolment of Advocates; Chapter IV deals with the Right to Practise. Section 29 of the Act clearly States that "*subject to the provisions of this Act and any Rules made thereunder, there shall, as from the appointed day, be only one class of persons entitled to practise the profession of law, namely, Advocates*". Thus, only those who are enrolled with the Bar Council of a State are permitted to practice.

12. Section 30 further bestows the right to practice upon the Advocates as under :-

30. Right of advocates to practise.—*Subject to the provisions of this Act, every advocate whose name is entered in the 3 [State roll] shall be entitled as of right to practise throughout the territories to which this Act extends,—*

- (i) *in all courts including the Supreme Court;*
- (ii) *before any tribunal or person legally authorised to take evidence; and*
- (iii) *before any other authority or person before whom such advocate is by or under any law for the time being in force entitled to practise.*

13. Thus, an Advocate would have the right to appear in all Courts, including the Hon'ble Supreme Court, before any Tribunal, or person legally authorized to take evidence, and before any other authority or

person before whom such Advocate is by or under any law for the time being in force entitled to practice.

14. Section 33 of the Act is as under :-

33. Advocates alone entitled to practise.—

Except as otherwise provided in this Act or in any other law for the time being in force, no person shall, on or after the appointed day, be entitled to practise in any court or before any authority or person unless he is enrolled as an advocate under this Act.

15. Section 33 seems to create almost a bar that no person shall be entitled to practise in any Court, unless he is enrolled as an advocate under this Act. However, the said bar is subject to the exception as provided under the Act.

16. The exception would necessarily take us to Section 32. Section 32 is as under :-

32. Power of court to permit appearances in particular cases.— *Notwithstanding anything contained in this Chapter, any court, authority, or person may permit any person, not enrolled as an advocate under this Act, to appear before it or him in any particular case.*

17. Section 32 carves out an exception to Section 29 and Section 30 when it states that "notwithstanding anything contained in this Chapter, any Court, authority, or person may permit any person, not enrolled as an Advocate under this Act, to appear before it or him in

any particular case. However, the use of the words "*may permit any person, not enrolled as an Advocate under this Act*" clearly indicates that the Court has been bestowed with the discretionary power to permit, or not to permit such a person, who is not enrolled as an Advocate, to appear before it.

18. Hence, Mr. Sanjiv Chaturvedi is not justified in claiming that he has a right to argue in person.

19. Even Rule 13 of the Rules clearly state that "*notwithstanding anything contained in these Rules, the concerned Court before which the matter lies, may, in its discretion, permit a party to appear and conduct the proceedings in Court, in-person or may direct such a party to appear before the Party-in-Person Committee*".

With the use of the word "may", even this provision bestows a discretionary power on the Court to permit, or not to permit a party to appear in person, and to argue his, or her case.

20. In the case of ***Goa Antibiotics and Pharmaceuticals Limited v. R.K. Chawla and***

another [(2011) 15 SCC 449], the Hon'ble Supreme Court had clearly opined as under :-

4. *Section 32 of the Act, however, vests discretion in the court, authority or person to permit any person who is not enrolled as an advocate to appear before the court and argue a particular case. Section 32 of the Act is not the right of a person (other than an enrolled advocate) to appear and argue before the court but it is the discretion conferred by the Act on the court to permit any one to appear in a particular case even though he is not enrolled as an advocate.*

21. Therefore, the Hon'ble Supreme Court has clearly held that it is not the right of a person, other than an enrolled Advocate, to appear and argue before the Court, but it is a discretion vested by the Act on the Court to permit, or not to permit a party to appear in person, and to argue the case.

22. But the moot point before this Court is whether Mr. Sanjiv Chaturvedi should be permitted to argue his case in-person, or not?

23. Mr. Sanjiv Chaturvedi has also submitted a supplementary affidavit, wherein he has given reasons for permitting him to argue his case in-person. In the affidavit, he has pleaded that he has argued his case in-person before various High Courts, such as the Hon'ble Delhi High Court, and the Hon'ble High Court for the

State of Punjab and Haryana, and even before the Hon'ble Supreme Court. He has further pleaded that he has argued his cases even before the Principal Bench of Hon'ble Central Administrative Tribunal in Delhi. In many of these cases, his legal acumen and his logical arguments have been appreciated by the Courts and the Tribunals.

24. He has further pleaded that despite the fact that the Advocates engaged by him have appeared on his behalf *pro bono*, but even then, they have been subjected to conviction for criminal contempt, and for criticism by the Tribunals. Thus, he finds it extremely difficult, if not impossible, to engage the service of any counsel.

25. He has further pleaded that he has been waging a one man's war against corrupt officers, and officers who are in high posts. Therefore, repeatedly, he and his advocates have been entangled in needless controversies by those who are in power. Therefore, he would not like to drag any counsel through the obstacle courses created by persons in power. Hence, he would prefer to argue his own case, and to risk his own life.

26. Lastly, he claims that he has the highest regard and faith in the judiciary, and is grateful to this Court for showing its concern for engaging the best of the legal minds on his behalf.

27. A bare perusal of the record of this case clearly reveals that Mr. Sanjiv Chaturvedi is, indeed, faced with an uphill task, as he has acted as a whistle-blower on many occasions. *Prima facie*, it also reveals that Mr. Sanjiv Chaturvedi is embroiled in large number of controversies, which he has been trying to clarify and resolve in his favour before many fora. Many of the observations made by different fora are, indeed, in favour of Mr. Sanjiv Chaturvedi. His knowledge of law, his erudite arguments, his critical analysis of the law and the facts has been lauded by a few legal fora. Thus, clearly, Mr. Sanjiv Chaturvedi is in a position to argue both on facts and law in the present case.

28. It is, indeed, saddening to note that a litigant claims that "he has no faith in the members of the Bar". But, perhaps, this is a misplaced impression in the mind of Mr. Sanjiv Chaturvedi. For, there is no dearth of

honest and hardworking lawyers in the Bar. But, a litigant must have faith before he engages the service of a counsel. The impression carried out by Mr. Sanjiv Chaturvedi may not be in an individual one, but, undoubtedly, may be a general one. Such an impression should merely force the learned members of the Bar, and the learned members of the legal fraternity to do a bit of introspection.

29. Mr. Sanjiv Chaturvedi is also of the opinion that he should not risk getting his counsel in trouble while he fights his single battle against powerful persons. Therefore, he wishes to save a counsel from any professional embarrassment, which may come his or her way.

30. Therefore, this Court is of the opinion that Mr. Sanjiv Chaturvedi should be permitted to appear in-person, and to argue his case.

31. The Registry is directed to inform Mr. Sanjiv Chaturvedi that this case will be listed on 23.10.2021. The said information shall be sent immediately to Mr.

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Sanjiv Chaturvedi so as to enable him to prepare his case.

32. List this case on 23.10.2020

RAGHVENDRA SINGH CHAUHAN, C.J.

ALOK KUMAR VERMA, J.

Dt: 27th September, 2021
Rahul