

Court on Its Own Motion Vs. State

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Court : Delhi

Decided On : Mar-14-2014

Judge : Kailash Gambhir

Appellant : Court on Its Own Motion

Respondent : State

Advocate for Def. : Mr. L.K. Singh, Mr. Naresh Kaushik, Ms. Aditi Gupta, Mr. P.K. Sharma, Ms. Zubeda Begum, Mr. Ashok Aggarwal, Ms. Meera Bhatia, Mr. Saleem Ahmed

Advocate for Pet/Ap. : Mr. Rajeev K. Virmani

Judgement :

\$~4 * + IN THE HIGH COURT OF DELHI AT NEW DELHI W.P.(CRL) 1549/2009
COURT ON ITS OWN MOTION Petitioner Through: Mr. Rajeev K. Virmani,
Senior Advocate (Amicus Curiae) versus STATE Respondent Through: Mr.
L.K. Singh, Advocate for Delhi Prosecutor Welfare Association. Mr. Naresh
Kaushik, Ms. Aditi Gupta, Advocates for UPSC Mr. P.K. Sharma, Standing
Counsel for CBI, Delhi High Court with Mr.Jaideep Tandon and Mr.Rakesh
Sharma, Advocates Ms. Zubeda Begum, Standing Counsel for GNCT of Delhi and
for Home Department and Law & Justice. Mr. Ashok Aggarwal and Mr.Umesh
Singh, Advocates for Intervenor Ms. Meera Bhatia, Advocate for UOI. Mr. Saleem
Ahmed, Officiating Standing Counsel for GNCT of Delhi CORAM: HON'BLE MR.

ORDER

% 14.03.2014 KAILASH GAMBHIR, J.

(Oral) 1. Mr. Rajeev K. Virmani, Senior Advocate and Amicus Curiae for the petitioner has placed on record the suggestions given by him to improve and strengthen the functioning of the Prosecutors and the Prosecution Agencies. Learned amicus curiae further submits that he himself had visited the District Courts Saket, Patiala House Courts, District Courts Karkardooma to personally see the functioning of these public prosecutors, the infrastructure facilities and other facilities available to them in the discharge of their day to day duties. Learned amicus curiae also submits that vide directions given by this court, the public prosecutors were provided with the facility of Laptops and pursuant thereto all the public prosecutors did purchase a Laptop within the financial limit of Rs.35,000/-, but shockingly they were without any facility of internet connection or for that matter various legal sites were also not made accessible. Learned amicus curiae submits that the State has not even renewed the subscription of Manupatra online journal and due to this non renewal, these public prosecutors cannot have access to the same or any other online journal. Mr. Virmani, learned amicus curiae also submits that one internet connection with the facility of Wi-Fi in every court complex can sufficiently cater to the needs of all the public prosecutors and through internet they can have access to all the free sites of law journals at least. Mr. Virmani, learned amicus curiae also submits that earlier they used to be provided space in every court of Metropolitan Magistrate and Session Courts, exclusively meant for public prosecutors but on his visit this time, he found that no such space is dedicated to the public prosecutors. Learned amicus curiae also submits that these public prosecutors have not been able to keep their files in safe custody due to the paucity of space, and insufficiency of racks or cabinets. He further states that for want of proper safe keeping of files, which gets lost often and due to this lack, adjournments are being sought frequently by the public prosecutors, which ultimately leads in delaying the criminal trials. Learned amicus curiae further submits that the prosecutors have not been provided with sufficient stationery which is necessary for conducting their day to day work. Learned

amicus curiae also submits that even the printers which were made available to the Prosecution Branch were not found functioning for want of cartridge and maintenance.

2. Learned amicus curiae also submits that the prosecutors have been provided inadequate sitting area in the office block located to them in various District Courts and in one cabin, 2 to 3 public prosecutors sit which makes it quite difficult for them to deal with their cases properly. Learned amicus curiae further submits that earlier, one official vehicle was provided to each of the court complex for official use of public prosecutors as they were required to attend meetings in the Headquarters of Tis Hazari Courts but recently, since last 3-4 months, this facility has also been withdrawn.

3. Copy of the report submitted by learned amicus curiae has been supplied to Ms. Zubeda Begum, Standing Counsel for GNCT of Delhi. After having gone through the said suggestions, we find that the suggestions are invaluable to strengthen the working of the public prosecutors and therefore, we direct the GNCT of Delhi to take into consideration the said suggestions submitted by Mr. Virmani and give a response thereto before the next date of hearing by way of an affidavit to be filed through Secretary (Home), GNCT of Delhi.

4. Ms. Meera Bhatia, Advocate has again drawn our attention with regard to the non payment of bills by various Administrative Departments of GNCT of Delhi to the lawyers who are on the panel on the civil side. In response to this, Ms. Zubeda Begum, Standing Counsel has drawn our attention to the minutes of the meeting which took place alongwith Secretary, Principle Secretary/HODs on 7th March 2014 in the office of the Chief Secretary, wherein one of the decisions was taken to give direction to all the Government Departments to clear the pending bills of government counsels. The Chief Secretary however directed the concerned Departments to immediately clear all the Bills and send a report to this effect to the Law Department by 12 th March 2014. Based on the said decision taken in the meeting on 7th March 2014, Ms. Zubeda Begum, Standing Counsel for GNCT of Delhi submits that no lawyer who was on the panel of GNCT of Delhi on the civil side would find any difficulty in getting his/her pending bills settled.

5. Vide orders dated 12th December 2013 we have given directions that all the Administrative Departments of GNCT of Delhi shall make the payments with regard to all the pending bills of the government lawyers on the civil side without committing any default, within a period of two months from the date of receipt of their bills. It was also directed that so far as the past pending bills of the counsels were concerned and where the BTS were not issued by the Law Department, still the payment shall be made by these departments on the certification of the concerned Standing Counsel on the bills.

6. Considering the fact that directions, have already been given to the Chief Secretary, to all the Principal Secretaries/HODs of the respective departments of GNCT of Delhi that they shall clear all the pending bills of the government counsels and send their report to the Law Department by 12th March 2014, we do not see any difficulty popping up in the settlement of pending bills of government counsels. We further direct that all the lawyers whose bills are still pending, they can get the necessary certification done from Ms. Zubeda Begum, Standing Counsel for GNCT of Delhi. Ms. Meera Bhatia, counsel present in court can also submit her bills with Ms. Zubeda Begum, Standing Counsel. We however, make it clear that serious view shall be taken by this court if even after certification done by the Standing Counsel, GNCT of Delhi, the payments would not be cleared and we may be constrained to impose heavy costs on the concerned Principal Secretary/Secretary/HODs for not clearing the bills of the government counsels. We also make it clear that said costs will be directly deducted from their respective salaries. The Government Departments and other Departments of the Government must appreciate that most of the lawyers who represent the Government as Standing Counsels/Additional Standing counsels/Panel Lawyers are normally not engaged by the private parties, especially where the Government is one of the contesting party and therefore the timely payment of their professional bills should be on top priority of the Government and its other departments.

7. Mr. Virmani, learned amicus curiae has also drawn our attention that even the CBI has not made payments to the public prosecutors of the Delhi High Court. It has also been submitted that not only the existing public prosecutors are not getting their payments in time but the prosecutors and the former prosecutors or

the Standing Counsels bills are also pending clearance with the CBI for the past considerable period.

8. Let Notice be issued to the Director (Prosecution) through Mr.P.K. Sharma, Standing Counsel for the CBI. Mr. P.K. Sharma, Standing Counsel for CBI has been summoned to represent the Director (Prosecution) and has now appeared in court.

9. Let the Director (Prosecution), CBI, file its affidavit giving details of pending bills of their former prosecutors/standing counsels and even the ones who are presently working. To this, we impress upon the Director (Prosecution), DLA (HQ) and Joint Director (Administration), CBI, without there being any justified grounds, to clear the pending Bills of various prosecutors/Standing Counsels well before the next date and if the payments are not made by the CBI before the next date, then the same shall then call for certain coercive directions. The public prosecutors/standing counsels whose professional fee bills are pending clearance before the CBI, may approach the concerned branches of CBI immediately in this regard.

10. Mr. P.K. Sharma, Standing Counsel for CBI has apprised this court that the proposal for enhancement of the fee schedule of public prosecutors representing the CBI is pending approval with the Law Ministry for the last about 3-4 months and no decision has yet been taken by the Law Ministry. Accordingly, Secretary, Law Ministry is directed to take decision on the said proposal of the CBI before the next date of hearing.

11. With regard to the filling up of vacancies of Additional Public Prosecutors/Assistant Public Prosecutors, Ms. Zubeda Begum, Standing Counsel for GNCT of Delhi has submitted that the proposal for creation of 63 posts of Assistant Public Prosecutors, 38 posts of Additional Public Prosecutors and one post of Chief Prosecutor has been made. Standing Counsel for GNCT of Delhi also submits that after the said proposal is approved by the Lt. Governor, UPSC shall be approached to fill up the vacancies. Standing Counsel for GNCT of Delhi also submits that these 63 posts are in addition to the sanctioned posts of 160 posts of Additional Public Prosecutors who are already in place.

12. Standing Counsel for GNCT of Delhi submits that steps are being taken for recruitment of 32 Assistant Public Prosecutors which have fallen vacant due to creation of 25 posts in the month of February 2014 and 7 posts becoming vacant due to resignation, etc. Standing Counsel for GNCT of Delhi further submits that out of 17 advertised posts, offer of appointment to 9 Assistant Public Prosecutors has already been issued who were recently selected by the UPSC and out of 9 selected Assistant Public Prosecutors, only 8 candidates have come forward to give their consent for their appointment. Standing Counsel for GNCT of Delhi also submits that after completion of the formalities, the said 8 candidates are likely to be appointed within a period of two-three weeks.

13. Mr. Naresh Kaushik, Advocate representing the UPSC submits that in fact UPSC has selected all the 17 Public Prosecutors against all the advertised posts and out of 17, only 9 candidates have fulfilled the requirement. Counsel for the UPSC also submits that out of 17 candidates, in fact UPSC had given two weeks time to six candidates to produce their original documents by 31st March 2014, the decision will be taken by the UPSC on these candidates. Counsel for the UPSC also submits that in the event of they being not selected, then the UPSC will proceed to select the candidates from the reserved panel in accordance with the existing rules and regulations. It is further informed that out of 17 candidates, two candidates have approached to Central Administrative Tribunal (CAT) and as per the directions of Central Administrative Tribunal, their cases are put in sealed covers. Standing counsel further submits that the Home department of GNCT of Delhi is also initiating steps to send requisition to UPSC for recruitment of 32 Assistant Public Prosecutors and these 32 posts will take care of 25 courts of Metropolitan Magistrates and 7 posts becoming vacant due to resignation etc. Counsel also submits that the Home Department has proposed to invite fresh applications for appointment of Assistant Public Prosecutors on contract basis strictly in accordance with the Recruitment Rules and the necessary public notice in this regard shall be issued by the Department after the completion of election process.

14. One of the pre-dominant cause for delay in disposal of criminal case is due to shortage of public prosecutors. It is quite shocking to learn that some of the public

prosecutors have been burdened to take care of the work of two criminal courts. This lackadaisical and apathy of the Government in not filling up of the vacancies on the posts of Assistant Public Prosecutors/Additional Public Prosecutors is quite intriguing and appalling. Recently, the Honble Supreme Court of India has given directions for completing the trial of all MPs/MLAs facing criminal prosecution within a period of one year after the charges are framed. But how can any criminal court function in the absence of a public prosecutor attached with the court. It is the statutory obligation of the State to ensure that every criminal court whether be of Metropolitan Magistrate or the Sessions Court has the assistance of an able and competent public prosecutor. It is also the duty of the State to ensure that the public prosecutors so appointed have all the requisite facilities for their efficient functioning to discharge their day to day duties.

15. This court has already expressed its dissatisfaction and dismay over the conditions in which the public prosecutors have been working. The court has also given various directions for timely appointment of public prosecutors so that the criminal justice system does not suffer due to the absence of the public prosecutors in any criminal court. It is a matter of great concern that for the timely appointment of public prosecutors, this court has to give directions from time to time to GNCT of Delhi. The only anxiety of the court is that no criminal court should be deprived of the assistance of public prosecutors. The Government of NCT of Delhi should get to know in advance as to how many new posts of Judicial officers are going to be created and filled up in various district courts of Delhi. It will be taken as a case of gross negligence on the part of the concerned Ministry/Department, especially the Home Department of the Delhi if they do not take prompt steps in filling up the vacancies of Assistant Public Prosecutors/Additional Public Prosecutors to ensure that all public prosecutors are assigned the duties with such new criminal courts, be that of Metropolitan Magistrates or the Sessions courts. It is thus made clear to the GNCT of Delhi that this court will take strict view, if at any stage it is found that due to any lapse or negligence, timely appointment of public prosecutors have not taken place. The back-up of 10% of the strength of the public prosecutors in each and every district shall also ensure that during certain exigencies also, the criminal courts will not go unrepresented with these public prosecutors.

16. Let compliance report be filed by the Home Department, CBI, GNCT of Delhi within four weeks.

17. List the matter for further orders on 7th May 2014.

18. This matter shall be treated as part heard.

19. A copy of this order be given dasti to all the counsels representing their respective departments for compliance. KAILASH GAMBHIR, J SUNITA GUPTA,
J MARCH14 2014 pkb

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