

**Court on Its Own Motion Vs. State**

**Court on Its Own Motion Vs. State**

**SooperKanoon Citation :** [sooperkanoon.com/1171354](http://sooperkanoon.com/1171354)

**Court :** Delhi

**Decided On :** Jul-24-2014

**Judge :** Kailash Gambhir

**Appellant :** Court on Its Own Motion

**Respondent :** State

**Judgement :**

\$~SDB-1 \* 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 and amicus curiae. versus STATE Through: % ..... Respondent Mr. Sunil Sharma, Additional Public Prosecutor for the State & Mr. Saleem Ahmed, Additional Standing Counsel (Crl.) Mr.P.K. Sharma, Standing Counsel for CBI (DHC) with Mr.Rajesh Sharma, Ms. Somi Mehra and Ms.Renu Malick, Advocates Ms. Zubeda Begum, Standing Counsel for GNCT of Delhi with Directorate of Prosecutor, Mr.V.S. Aggarwal and Mr. Alok Garg, Deputy Secretary (Home) in person. Mr. Naresh Kaushik, Ms. Aditi Gupta, Ms. Amita Chaudhary, Advocates for UPSC Mr.L.K. Singh, counsel for the Public Prosecutor Association. Ms.Meera Bhatia, Advocate for UOI. CORAM: HON'BLE MR. JUSTICE KAILASH GAMBHIR HON'BLE MS. JUSTICE SUNITA GUPTA

**ORDER**

2407.2014 Fresh affidavit has been filed by Additional Secretary, Department of Home. Alongwith this affidavit, the officer has also placed on record the status of

Public Prosecutors as it exists on 21 st July 2014 and their future course of action with regard to the appointment of Assistant Public Prosecutors and Additional Public Prosecutors. As per this tabulated statement, at present there are 110 Metropolitan Magistrates functioning in various district courts of Delhi and against that strength of MMs, 110 Assistant Public Prosecutors are in place. This statement also disclose that sanction for the appointment of 183 Assistant Public Prosecutors already exist. The affidavit and the statement further discloses that appointment of 11 Assistant Public Prosecutors on regular and contractual basis is likely to be made shortly as the process to appoint these prosecutors is almost complete. It further states that the Home Department is in process of appointing 27 Assistant Public Prosecutors on contractual basis and their selection process is under way. It further states that the UPSC is yet to recommend names of two candidates in response to Home Departments requisition to recruit 17 Assistant Public Prosecutors which was made in April 2013. Counsel also submits that another requisition to recruit 30 Assistant Public Prosecutors on regular basis has already been sent to UPSC on 4th June 2014 and on their appointment they will replace the Assistant Public Prosecutors who are being appointed on contractual basis. With regard to the status of Public Prosecutors, relating to the strength of Session courts is concerned, the stand taken by the Home Department is that at present, there are 85 Sessions Courts in various District Courts of Delhi against the sanctioned strength of 102. It further states that the total filled up posts of Additional Public Prosecutors as on this date is 71. Counsel also submits that out of 71 filled up posts of Additional Public Prosecutors, 7 Additional Public Prosecutors have been posted in Police Training Centre, Food Safety Department and one Additional Public Prosecutor has been absent from his duty. Counsel also states that the Home Department has already initiated the process to fill up 32 newly created posts of Additional Public Prosecutors so that no session court is left without the assistance of Additional Public Prosecutor and these appointments are likely to take place by the end of August 2014. Counsel also submits that with completion of the process to promote 31 Assistant Public Prosecutors to the post of Additional Public Prosecutors, the total number of Additional Public Prosecutors would increase to 95 and thus, the said strength of 95 Additional Public Prosecutors will take care of 85 session courts in various Districts of Delhi. Various

directions have been given by this court to the Government of NCT of Delhi, in the present writ petition, time and again, and we may refer to one of the directions given by this court vide order dated 14th March 2014 where the court while expressing its complete dissatisfaction and dismay took a view that it will be taken as a case of gross negligence on the part of the concerned Ministry/Department, especially Home Department of Delhi, if they do not take prompt steps in filling 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 Magistrate or Sessions Courts. The GNCT of Delhi was also put to notice that this court would take strict view if at any stage either due to any lapse or negligence, timely appointment of the Public Prosecutors does not take place. It was also directed that the backup of 10% of the strength of public prosecutors in each and every district could ensure that the criminal courts will not remain unrepresented due to the absence of the Public Prosecutors for multiple factors. On perusal of the affidavit filed by the Additional Secretary, Home, GNCT of Delhi, the impression given to the court is that they are not as serious as they ought to be. The present outcry due to the pendency of large number of criminal cases is perhaps not their concern. The absence of a public prosecutor in a criminal court is one of the major cause in the delayed disposal of criminal cases. Therefore, the timely appointment of public prosecutors is absolutely imperative and there should not be any kind of compromise or lackadaisical approach in the same as no criminal court can function in the absence of public prosecutors. We have been informed by Ms. Zubeda Begum, standing counsel for GNCT of Delhi that in response to the advertisement issued by the Home Department on 21st April 2014 to appoint 27 Assistant Public Prosecutors, 534 applications have been received and scrutiny of these applications are complete. Counsel further submits that the entire process for appointment of 27 Assistant Public Prosecutors on contractual basis will be completed in a months time. Although we hardly find any justification for such a long delay to appoint Assistant Public Prosecutors on contractual basis, where the selection is based only on interview, after scrutinising their applications, to find whether they fulfil the eligibility criteria or not. In our view, this process could have been completed by GNCT of Delhi by now so that at least these contractual appointees could have been in place. Be that as it may, we now

direct the Home Department to complete the entire process of selecting 27 Assistant Public Prosecutors on contract basis within a period of one month. It is also a matter of fact, well known to the GNCT of Delhi that the process for future appointment of 80 judicial officers is under way which is likely to be completed by the end of this year and therefore, we expect the Home Department of GNCT of Delhi to ensure that the Assistant Public Prosecutors will be in place with all the Metropolitan Magistrates to be appointed out of the said new recruits. Furthermore, as has been rightly pointed out by Mr. R.K. Virmani, learned amicus curiae, that 31 Assistant Public Prosecutors are being promoted to the post of Additional Public Prosecutors and then they will be attached to the court of Sessions, ultimately resulting in a shortfall of 31 posts as far as Metropolitan Magistrates are concerned. Counsel thus states that this selection of 31 Assistant Public Prosecutors to the post of Additional Public Prosecutor will further bring out the actual strength of Assistant Public Prosecutors to 75 instead of 106. In response to this, the stand of Ms. Zubeda Begum is that the Government has already sent a requisition to UPSC to recruit 32 Assistant Public Prosecutors. This stand taken by GNCT of Delhi also does not satisfy us as the appointment of 32 Assistant Public Prosecutors for which the requisition has been sent by the GNCT of Delhi to UPSC, is being replaced with the Additional Public Prosecutors who have been appointed on contractual basis and therefore, in that event the shortfall of 31 Assistant Public Prosecutors who are being promoted to the next higher rank of Additional Public Prosecutors would stay intact. What we impress upon GNCT of Delhi is that all the public prosecutors should be appointed and placed as per the sanctioned strength and the same will also take care of the 10% vacancies, in order to meet the other exigencies when these public prosecutors are on leave and likewise, the GNCT of Delhi shall ensure that the requisite strength of Additional Public Prosecutors should be in place as far as the Session Courts are concerned including the backup of 10%. We also direct the UPSC to take prompt and expeditious steps to recruit the 32 Assistant Public Prosecutors for which they have already received the request from GNCT of Delhi on 4th June 2014 and this process by all means should be completed within maximum period of five months giving due priority to these sensitive appointments. We now deal with the aspect regarding the various facilities to be made available to the public prosecutors in

terms of the suggestions given by the amicus curiae in his report dated 13th March 2014. Action Taken report has been filed by GNCT of Delhi. Mr. Virmani, has pointed out that this action taken report itself suggests that certain actions have been initiated in terms of the suggestions given by the amicus curiae. Counsel thus, submits that direction be given to GNCT of Delhi to file a fresh status report to demonstrate the implementation of all the steps which have been referred to in the action taken report. Fresh status report shall be filed by GNCT of Delhi in this regard within a period of six weeks. With regard to the other aspect of clearance of the bills of public prosecutors, standing counsels, representing CBI and that of GNCT of Delhi, necessary directions shall be passed on the next date of hearing. List again on 19th September 2014. A copy of this order be given dasti under signatures of court master to counsel for the parties. KAILASH GAMBHIR, J  
SUNITA GUPTA, J JULY24 2014 pkb

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**