

(2011) 01 AHC CK 0110

Allahabad High Court

Case No: Misc. Bench No. 4112 of 2008

Shambhu Sharan Singh, Adv.

APPELLANT

Vs

D.J.

RESPONDENT

Date of Decision: Jan. 12, 2011

Acts Referred:

- Constitution of India, 1950 - Article 14

Citation: (2011) 1 ADJ 865

Hon'ble Judges: Virendra Kumar Dixit, J; Devi Prasad Singh, J

Bench: Division Bench

Advocate: Gopesh Tripathi, for the Appellant;

Final Decision: Allowed

Judgement

1. Heard learned Counsel for the Petitioner and the learned Standing Counsel. With the consent of the learned Counsel for the parties, the petition

is being heard finally at the admission stage.

2. In District Raebareli multi storey 50 chambers have been constructed in the Civil Court campus for the allotment to the lawyers with regard to

professional use. A notice/guideline has been circulated by the District Judge, Raebareli, which is contained in Annexure No. 1 to the writ petition

laying down criteria for allotment of chambers. The Petitioner is aggrieved by condition Nos. 4 and 5 of the impugned notice which is reproduced

as under:

3. The submission of the Petitioner's counsel while assailing the impugned condition is that allotment of chambers only in favour of Advocates who

have more than 20 years of practice at Bar is not fair and just. Such persons will be allottee with right to accommodate 4 to 15 junior lawyers in

their chambers. The entire right has been given to Senior Advocate to whom a chamber may be allotted to accommodate 4 or more persons.

According to Petitioner's counsel such action on the part of District Judge is arbitrary as well as discriminatory. Every member of the Bar has got

right to claim allotment of chambers and undue advantage or preference cannot be given to Senior Advocates. Learned Counsel for the Petitioner

has relied upon a Division Bench judgment of this Court in the case of Vijay Shanker Tripathi and Ors. v. Hon"ble High Court of Judicature at

Allahabad and Ors. reported in 2007 (25) LCD 1266 in which one of us (Justice D.P. Singh) was the member wherein the identical controversy

had cropped up in the Lucknow Bench of High Court with regard to allotment of chambers. The Court held that the allotment of chambers cannot

be done arbitrarily and discretion must be exercised by the competent authority in just and fair manner in conformity with Article 14 of the

Constitution of India. While relying upon the Apex Court decision in the case of Sankari Cement Alai Thozhilalar Munnetra Sangam, Tamil Nadu

Vs. Government of Tamil Nadu and Another, the Bench held that the classification must satisfy the twin test to the effect that the classification be

founded on intelligible differentia and must have rational nexus to the objects sought to be achieved.

4. It appears that the District Judge was not justified in granting exclusive preference to the Advocates having 20 years or more practice at Bar.

Such classification seems to be arbitrary and does not fulfill the twin test postulated by the D.S. Nakara v. U.O.I., (Supra) relied upon in the case

of Vijay Shanker Tripathi and Ors. (Supra). The decision could have been taken to make the Senior Advocate as the chief allottee and juniors as

co-allottee, that too should have been done after considering the applications submitted by all the members of Bar in terms of guideline circulated

for the purpose.

5. Learned Standing Counsel submits that the guidelines have been framed in terms of Division Bench judgment of this Court in the case of Vijay

Shanker Tripathi and Ors. (Supra) but it does not seem to be correct.

In the case of Vijay Shanker Tripathi and Ors. (Supra) in para 42, this Court held as under:

42. It is not necessary to discuss the other cases relied upon by the Petitioner's counsel in view of discussion made hereinabove. So far as the representation of Scheduled Caste, Scheduled Tribe and Backward candidates are concerned, their cases should have been considered alongwith others on merit on the basis of pre-framed guidelines. Advocates as a whole constitute a class and possess autonomy under Advocates' Act. It is a competitive field where everyone commands respect because of knowledge and ability. Possession of chamber is pre-requisite for the smooth functioning and discharge of duty by an advocate. In the absence of a chamber lawyer faces unlimited problems. It is a necessity to meet out the professional requirement. Accordingly, every candidate who is the member of profession of law and practising in this Court has got right to be considered for allocation of chamber and for that purpose it is necessary that appropriate reasonable guidelines should be framed so that it may appear that justice have been done to them. For the purpose of framing of guidelines, the chamber allotment rules governing the allotment in Supreme Court and other High Courts may be taken into consideration to meet out the procedural requirement.

6. Thus, it is obvious that the Division Bench opined that every member of the profession should be given a chance in allocation of chambers and exclusive right or privilege cannot be given to a particular section. Of course, keeping in view the fact that the number of chambers available with the District Judge will not be sufficient to accommodate all the lawyers practicing in Raebareli reasonable decision may be taken formulating criteria as has been done while framing guidelines by this Court at Lucknow or guidance may be taken with regard to procedure adopted for allotment of the chambers in Supreme Court. Juniors must be accommodated in the chambers as co-allottee along with Senior Advocates instead of giving exclusive right to senior to choose Juniors numbering from 4 to 15. While choosing juniors the District Judge may also lay down criteria depending upon the engagement of junior lawyers in professional matters.

He may make a request for guidelines prepared by this Court and in consequence thereof Registrar shall provide the guidelines with regard to allocation of chambers by this Court at Lucknow Bench.

7. The other limb of argument is with regard to charges. The charges or rent for the chambers must be reasonable and not excessive so that the lawyer may be able to pay the rent or lease rent even if they belonged to lower strata in terms of income.

8. There is another aspect of the matter. Some members of the Bar have forcibly occupied the chambers and claiming their right because of unauthorized occupation. Such members should be immediately evicted from the premises and notice may be served on them to vacate within fifteen days. In case they decline to do so they may be evicted by use of force. Senior Superintendent of Police, Raebareli shall provide all necessary assistance for the purpose of eviction to the District Judge in case a demand is raised. He shall ensure that unauthorized occupants are evicted immediately and only thereafter regular allotment of chambers should be done in terms of guidelines prepared for the purpose.

9. While passing interim order dated 07.08.2008 the Division Bench of this Court observed that no preference should be given unauthorized occupant of the chambers. We reiterate the interim order dated 07.08.2008 while finally adjudicating the controversy. The Advocates who are not behaving in lawful manner and do not vacate the premises immediately they shall be deprived from use the facilities of chambers. It shall be open to District Judge not to allotment the chambers to such Advocates who are taking law into their own hands by forcibly occupation of chambers constructed in judgeship, Raebareli.

10. The forcible occupation of the chambers by the members of Bar who belongs to noble profession, is neither desirable nor just and proper. The incident shows downfall of standard of Bar and its morality as well as professional conduct.

11. Accordingly, we provide that chambers shall not be allotted to those members of Bar against whom criminal cases are pending or convicted for an offence or they are under trial for commission of contempt of court. Every candidate shall be directed to file affidavit with regard to

involvement in a criminal case or contempt proceeding so that the chambers allotted to lawyers may not become a center of criminal activities. Of course, in case a person is acquitted honorably in criminal case, then his case may be considered at later stage during the course of subsequent allotment of chambers.

12. Before parting with the judgment we like to express our view. The controversy with regard to allocation of chambers arises not only in District Courts but in this Court also from time to time. Because of dispute with regard to guidelines matters are kept pending for years to come. Like in the present case on account of pendency of writ petition almost since last three years, the chambers could not be allotted to members of the Bar, District Court Raibareli. Accordingly, it shall be appropriated for the High Court to frame rules with regard to allocation of chambers which may be applied not only for the District Court but also for High Court for all time to come. Such action on the part of High Court shall relieve Registrar or the authority concerned to take a decision or framed guidelines every time whenever the chambers are constructed for allotment to members of the Bar.

Subject to aforesaid observations and directions the writ petition is allowed.

Accordingly, writ petition is allowed.

The Condition Nos. 4 and 5 contained in the guidelines a copy which has been annexed as Annexure No. 1 to the writ petition struck down. The

District Judge is directed to prepare and circulate fresh guidelines expeditiously say within a period of one month from the date of production of

certified copy of this judgment and thereafter proceed to allot the chambers to the members of the Bar in terms of fresh guidelines within two

months. The total exercise should be done within three months.

Let Registrar General of this Court, place the copy of the judgment before Hon"ble the Chief Justice and His Lordships if pleases may consider for

constitution of Committee to frame Rules for allotment of chambers not only for the High Court but also for the subordinate courts for future use.