(2013) 02 JH CK 0021

Jharkhand High Court

Case No: WP (C) No. 411 of 2013

Pradeep Kumar Nayak		APPELLANT
	Vs	
The Registrar General and Others		RESPONDENT

Date of Decision: Feb. 8, 2013

Acts Referred:

- Advocates Act, 1961 - Section 34, 49, 49(1)(ae), 49(ae), 49A(2)(e)
- Bihar Reorganisation Act, 2000 - Section 29
- Constitution of India, 1950 - Article 225

Citation: (2013) 3 JLJR 262

Hon'ble Judges: Prakash Tatia, C.J; Alok Singh, J

Bench: Division Bench

Advocate: Rajeev Kumar and R.S. Singh, for the Appellant; Mokhtar Khan, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. Heard learned counsel for the petitioner. The petitioner is a lawyer practising in the High Court of Jharkhand and he has prayed for following reliefs in this petition:--

A. For issuance of an appropriate writ/order/direction commanding the respondent No. 1 recall its order issued on administrative side wherein restricted/selected category of advocates have been given passes for the entry of their vehicle inside the court campus whereas other advocates are not allowed to park their vehicle inside the campus of Hon''ble High Court being discriminatory and creation of class within a class is de hors the object and beyond the object.

B. For a declaration that the Rule 210 of Jharkhand High Court Rules, is ultra vires rule making power u/s 34 of Advocates Act, 1961 as the power to make rule for prescribing the manner of seniority amongst advocates lies with the Bar Council of

India, u/s. 49(ae) of the Advocates Act, 1961.

C. For a declaration that Hon''ble Jharkhand High Court in required to follow the Rule for disposed of cases namely Jharkhand High Court (Flow of Management) of Cases Rule, 2006 for which specific representation was given but was of no avail.

D. For further declaration that a transparency is required to be made in the process of recommendation of names of advocates for being elevated as a Judge of High Court being an administrative decision, must have predictable parameter like any other executive division particularly when most of its recommendation sent in past 8 years has returned back, resulting in non-filling of vacancy in Bar quota.

2. In this petition, the reliefs mentioned above clearly indicate that there appears to be a reasonable ground for having different categories of advocates by giving them designation as Senior Advocate by the High Court, which will certainly beneficial to Bar also ''and the Bar members, who are new may know the basic rule of law about mis-joinder of cause of action, mis-joinder and non-joinder of parties and relevance of facts in the matter etc. In this petition, petitioner, a practising lawyer, after mixing up several issues which are totally unconnected even questioned why the senior advocates have been given entry pass for their vehicles to park in the Court campus and why such facilities also has given to the members of the State Bar Council. It appears that the petitioner has raised grievance without finding out total area available for parking in the High Court premises. In addition to the above, the petitioner also challenged the vires of Rule 210 of the Jharkhand High Court Rules, 2001 empowering the High Court to designate Senior Advocate as, according to the petitioner, the same is ultra vires to the rule making power u/s 34 of the Advocates Act, 1961 and also under Article 225 of the Constitution of India. As according to the petitioner, such power to make rule for prescribing the manner of seniority amongst advocates lies with the Bar Council of India u/s 49(1)(ae) of the Advocates Act, 1961. Then petitioner in this very writ petition has grievance that Jharkhand High Court Case Flow Management in the High Court Rules, 2006 are not being given effect to and in the same petition he also has objection with respect to the non-transparency in the matter of process of recommendation of names of advocates for being elevated as a Judge of High Court.
3. Though, there are prayers as referred above, in the petition, at page 9 of sub-para 2 of para 7, there is a submission that without prejudice to the provisions contained in sub-section (1), the High Court at Calcutta may make rules providing for the holding of intermediate and the Final examinations for Advocate Clerks to be passed by the persons referred to in Section 58AG for the purpose of being admitted as advocates on the State roll any other matter connected with it.

4. At this stage, learned counsel for the petitioner has submitted that this para is only an inadvertent typing mistake.

5. Be that as it may, learned counsel could not specify us that why the petition may not be dismissed for the mis-joinder of cause of action and non-joinder of parties and want of any relief for the petitioner and filing a writ for mere declaration without consequential relief etc. as the petitioner, an advocate, has mixed up several issues which have no relation with each other.

6. The counsel for the petitioner also could not satisfy us that, once he is seeking the relief of declaring Rule 210 of the Jharkhand High Court Rules, 2001 to be ultra vires, why petitioner did not chose to seek a declaration that designation to the Senior Advocates, be withdrawn or be declared illegal, which is essentially consequential relief, without which mere declaration cannot be given and learned counsel for the petitioner could not satisfy us why the Senior Advocate has not been impleaded as party in the petition, who are directly affected persons.

7. Learned counsel for the petitioner then submitted that he is ready to implead the Senior Advocates as party in this petition.

8. The question is not that the petitioner is now ready to implead necessary party in this petition, but the question is why an Advocate, represented by another Advocate has filed the petition mixing up several issues and causes of actions without impleading necessary parties and has no single word to say about the non-impleading of the party initially in the petition. It is also law that, wherever there is consequential relief available and is not sought, then in that situation, the relief of mere declaration cannot be granted. If the relief for declaration of Rule 210 of the Jharkhand High Court Rules, 2001 is granted, then the consequence will be that there will be no rule permitting the High Court to keep the designated Senior Advocate. Thereby the affected party will be Senior Advocates. Therefore, per se Senior Advocates are necessary parties in this petition. In the petition, even High Court and Bar Council of India are not parties and without impleading High Court and Bar Council of India, Registrar General of the High Court and Secretary of the Bar Council of India have been impleaded as party, whereas proper and necessary parties are Jharkhand High Court, Ranchi and Bar Council of India, New Delhi.

9. The petitioner is also an Advocate and he has not disclosed whether he is a member of any Bar Association. We may presume that he is a member of the Bar Association. Petitioner has not stated that he tried to persuade the Bar Association to raise issue.

10. Be that as it may, learned counsel for the petitioner submits that petitioner is a member of the Bar Association. The petitioner''s counsel pointed out that petitioner has submitted a representation to the President of the Advocate Association (Annexure-3) with the signature of large number of advocates. It will be appropriate to quote the entire representation of the petitioner.

To,

The President,
Advocate Association,
Jharkhand High Court, Ranchi

Sub.:--Some burning issues pinching the shoe is worth pondering.

Sir,

It is surprising that when urgent topics have not been defined though required under Jharkhand High Court (Flow of -Management of Cases) Rules, 2006, and Motion of cases are allowed/disallowed by the Hon''ble Benches.

2. Another lamentable issue is motion to as been disallowed completely by an Hon''ble Bench, but while many years old cases await their turn in admission some cases of 2012 was fixed for hearing.

3. This is not all but classification is due made amongst Advocates in entry of vehicle on the ground whether or not they are pedigree decedents, de hors Advocates'' Act which was meant to create uniformity amongst legal practitioners. A large campus with boundary inside the campus which could have accommodated 100''s of two wheelers.

Our leaders are expected to sense importance of matters and act before it is too late.

Yours Sincerely,
Signature of Advocates
Jharkhand High Court, Ranchi.

(Emphasis supplied)

11. From the representation quoted above, it is clear that in the representation, petitioner has grievance with respect to non-implementation of the Jharkhand High Court Case Flow Management in the High Court Rules, 2006 and also there is a vague allegation with respect to the classification amongst the advocates for the purpose of entry of vehicle on the ground "Whether or not they are pedigree descendents, de-hors Advocates'' Act which was meant to create uniformity amongst legal practitioners".

12. This representation has been projected to be a representation for filing the petition and even questioning the process of appointment of the Judges in the High Court and challenging the High Court Rules as well as consequentially challenging the designation of the senior advocates given by the High Court under the Rule 210 of the Jharkhand High Court Rules, 2001.

13. Be that as it may, apart from the above, it is clear that the Rules of 2001 have been framed in exercise of the power conferred u/s 29 of the Bihar Reorganisation Act, 2000 as well as by other powers enabling the High Court to frame the Rules. The

Rule 210 gives power to the High Court to designate any advocate as senior advocate. The Advocates Act, 1961 and particularly Section 49, nowhere provides for giving power to the Bar Council to give status of senior advocate to any advocate. Section 49(1)(ae) is only giving power to the Bar Council of India to make rules for the purpose of determination of inter se seniority amongst the advocates and the same is u/s 49A(2)(e). The determination of the seniority inter se advocate is entirely different matter and the junior one is not automatically "designated Senior Advocate" for any purpose. Therefore, Section 49 of the Advocates Act, 1961 has nothing to do with the High Court powers to frame any rule for giving designation to the senior advocate.

14. So far as other issues are concerned, for that firstly, we may say that the issue raised by the petitioner has been raised without any home work or exercise. The petitioner in this writ petition itself has mentioned that there were only five Hon''ble Judges at the time of creation of Jharkhand High Court and now there are twelve Hon''ble Judges. We may make it clear that now the sanctioned strength is twenty, the case flow management rules can be given effect to in the ideal circumstances and for that purpose, the petitioner did not chose to plead, substantiate material facts and whether these rules can be given read out of context and reality or they substantially taken care by the administration. There is only allegation that some old cases kept pending and new cases are decided. No factual materials are available in this petition.

15. Procedural rules require to be applied according to the situation and in this case, there is no specific allegation, specific instances and then also in that situation, it is the High Court Administration which can take care of all these issues. If any suggestion would have been given that would have been better, but so far as filing of the petition without taking into confidence the members of the Bar Association or Bar Council cannot be appreciated, who are in know of the working of the High Court as well as with respect to the case management system. The petitioner questioned the transparency in the matter of recommendation of names of advocates for the elevation of Judges in the High Court. The procedure is very well available on the website of the Supreme Court giving a complete procedure, which is known as memorandum of appointment of the High Court Judges which includes even the procedure of appointment of not only the Judges from the Bar, but also it includes process for appointment of Acting Chief Justice and Chief Justice and process of appointment of Judges also.

16. On the issue of implementation of the Jharkhand High Court Case Flow Management in the High Court Rules, 2006 as well as in the matter of the transparency in the recommendation of the names of the advocate, the allegations of the petitioner are absolutely insufficient, vague and otherwise also none of the issues could have been entertained by us in view of the basic flaw in the petition of misjoinder of cause of action, but we have referred the issues in view of the fact that

petition has been filed by the practising advocate of the High Court and that is why, we have mentioned the one of reason that the distinction in the Bar is essential and framing of the Rule by the High Court for designation of the Senior Advocate is also essential so that Bar may improve under the guidance of the Senior Advocates in the matters relating to all the issues including the issue relating to the High Court and the Judiciary of the State, in addition to the enhancement of the knowledge of the junior advocates by the Senior Advocates, who may guide the junior advocates very well and furthermore, the senior advocate can appear essentially with the junior advocate which also gives the good benefit to the junior advocates in keeping knowledge as well as establishing in the profession. All these issues have been ignored while challenging the provision of the designation of the Senior Advocate.

17. Learned counsel for the petitioner however has referred to the judgment delivered in the case of Pashupati Nath Sukul and Others Vs. Nem Chandra Jain and Others, , and another judgment delivered in the case of Patel Roadways Limited Vs. Birla Yamaha Limited, .

18. We are of the considered opinion that in both the matters, none of the issues raised therein is relevant for the purpose of deciding this petition and therefore, these judgments as cited by the learned counsel for the petitioner is of no avail and thus, the petition could have been dismissed with heavy cost, but looking to the nature of the petition as well the defects in the petition, we may presume that it was not properly guided petition, and therefore, no cost is imposed. Present petition is dismissed with no cost.