

PETITIONER:
VINAY BALALCHANDRA JOSHI

Vs.

RESPONDENT:
REGISTRAR GENERAL SUPREME COURT TO INDIA & ANR.

DATE OF JUDGMENT: 02/09/1998

BENCH:
S.C. AGRAWAL, G.T. NANAVALI, S. SAGHIR AHMAD

ACT:

HEADNOTE:

JUDGMENT:
(With W.P. @ Nos. 1107/90, 1223/90, 628/90, 763/91, 84/94, 51/98 and 307/98 and I.A..../98 in W.P @ No. 1107/90 and I.A. No..../98 in W.P. @ No.883/90)

J U D G M E N T

NANAVALI, J.

All these petitions under Article 32 of the Constitution and applications made therein were finally heard on 16.5.1998 and disposed of by passing the following order:

"I.A..../98 in WP@ No.883/90 Upon being mentioned taken on Board. The applicant in this I.A. is an advocate and is a member of the Supreme Court Bar Association since 1971 but he is not actively practicing in this Court. He is the Chief Editor of the Supreme Court Cases. He has submitted that in view of the fact that in that capacity he has been closely associated with the work and needs of the Supreme Court and the Bar in the matter of reporting of the decisions of this Court, facility of a chamber may be extended to him in order to enable him to discharge his functions more effectively. In our opinion, it will be more appropriate for the applicant to submit a representation before Hon'ble the Chief Justice of India setting out the special facts and circumstances of his case and seek exemption from the provisions contained in the rules providing for allotment since the Hon'ble Chief Justice of India alone is competent to make such exemption. The application is disposed of accordingly.

WP@ No. 628/90 The grievance of the petitioner in this writ petition was regarding consideration of the representation of the petitioner under the Allotment Rules for the purpose of allotment of chamber to him. It is stated that during the pendency of the writ petition the said grievance of the petitioner has been removed and he has been allotted half portion of the chamber. In the circumstances, this writ petition has become infructuous and it is dismissed as such.

IN REMAINING MATTER. Arguments concluded. Detailed reasons will follow. We have heard the learned Attorney General for India/learned ASG, learned senior counsel/counsel for the parties in these matters. For

reasons to be given later, we are of the view that there is no infirmity in the roster system adopted under the letter dated August 29, 1995 for allotment of chambers to advocates-on-record, junior non-advocates on record and the senior advocates in the ratio of 7:2:1. The said system for allotment is therefore, upheld. If any of the associations of advocates or and advocate has any suggestion for modification of the said principle the same may be placed before Hon'ble the Chief Justice of India who may consider the same. But till any modification is made the existing principle will govern the allotment of chambers. If any of the petitioners in these matters has any individual grievance in the matter of allotment of a chamber, he can submit a representation to the Allotment Committee which may consider the same on merits. The writ petitions are disposed of accordingly. Interim order shall stand vacated. No costs."

We could not state the reasons then for want of time. So we are now stating the reasons why the writ petitions were dismissed.

What should be the correct criteria for allotment of chambers to the members of the Supreme Court Bar Association was the issue raised in the petitions. Most of them were filed by the Advocates-on-Record. One was by their Association. Their main grievance was that so long as the necessity of Advocates-on-Record for chambers is not satisfied neither the existing chambers nor the new chambers should be allotted to senior advocates and other advocates who are not Advocates-on-Record. the relief which they wanted was that the ratio recommended by the allotment Committee and approved by the Hon'ble the Chief Justice of India be declared as arbitrary and illegal. The remaining petitions were by those advocates who had to ventilate their individual grievances.

We will first deal with the contention raised by the petitioners in Writ Petition Nos. 883 of 1990 and 1223 of 1990, that not making available chambers to the Advocates-on-Record within the Supreme Court Compound is violative of their fundamental right under Article 19(1)(g) of the Constitution. It was submitted that Article 19(1)(g), guarantees, inter alia, the right to practice any profession. Practising legal professional is thus a fundamental right. An Advocate-on-Record can exercise this fundamental right of his effectively only if he is provided with a chamber within the supreme court premises. Therefore, to make a chamber available to him is an integral part of his guaranteed fundamental right. We see no substance in this contention. Even if we proceed on the basis that to practise as an advocate is a fundamental right, no right to be allotted a chamber within the Court premises follows from it. A legal practitioner/an advocate can carry on his legal profession without a chamber. It is not necessary that he should have a chamber within the Court premises. That, which merely facilitates the exercise of the fundamental right cannot be regarded as an integral part of that fundamental right. Far from being a fundamental right it does not even have the status of a right. No law confers such a right on a member of a legal profession nor such a facility has been accepted as a right even otherwise. Making a chamber available to be a member of the legal profession practising in a court of law is really a facility provided to him by the court. This is the true nature and character of the claim made by the Advocates-on-Record, not giving a chamber to him cannot be regarded as violative of Article 19(1)(g) of the Constitution. It may be stated that neither the

learned Attorney General nor Mr. Nariman, Mr. Venugopal and other senior advocates supported this contention and very fairly stated that the view which we are taking namely that it is a facility provided by the Court is the correct view.

As it is not a matter of right or legal obligation of the Court to provide the facility of a chamber to an advocate it would really be a matter of discretion of the Principal Judge of the Court to decide to whom and to what extent that facility should be extended, when the same is available; and, his only obligation would be to act in fair and just manner and not arbitrarily. It may be proper for him to frame rules, appoint a committee and fix guidelines for the purpose of allotment of chambers; but, the obligation is no higher than to act in a reasonable manner. It would be for him to decide when, to whom, to what extent and on what terms and conditions he should allot chambers.

The other contention raised on behalf of the Advocates-on-Record was that proposed allotment of chambers to Advocates-on-Record, non-Advocates-on-Record and Senior Advocates in the ratio of 7:2:1 is not consistent with the rule framed by the Hon'ble Chief Justice of India and also arbitrary and, therefore, violative of Article 14 of the Constitution. The rules which at present govern allotment of chambers are Lawyers' Chambers (Allotment and Occupancy) Rules. The relevant rules are Rules 2 to 4 and 23 and they are as under:

"Rule 2 Allotment of Chambers shall be made by a committee appointed by the Chief Justice of India and all such allotments shall be subject to the approval of the Chief Justice of India.

3. Allotment shall be made to such advocates of the Supreme Court as are members of the Supreme Court Bar Association who regularly practice in the Supreme Court and who reside in Delhi or New Delhi.

4. Allotment of Chambers to applicants shall be made in the following order or priority:

(i) Advocates-on-Record who are regularly practicing in the Court;

(ii) Advocates not being Senior Advocates, resident in Delhi/New Delhi who are regularly practicing in this Court and

(iii) Senior Advocates resident in Delhi/New Delhi who are regularly practicing in this Court.

Provided, however, that allotment to persons falling under categories (ii) and (iii) above may be in exceptional cases only.

23. The Chief Justice of India may from time to time make such amendments and additions to these Rules as may be necessary and expedient."

In accordance with these rules the Hon'ble Chief Justice of India has been appointing allotment Committee from time to time. The Allotment Committee consists mainly of the Advocates who are members of the Supreme Court Bar Association. On the basis of the recommendations made by the Allotment Committee Chief Justice of India ordinarily allots chambers to the advocates but as exceptional cases chambers have been allotted to advocates who are not Advocates-on-Record. On 1995, the Allotment Committee recommended to the Hon'ble the Chief Justice of India that chambers may be allotted to the Advocates-on-Record, non-Advocates-on-Record and Senior Advocates in the ratio of 7:2:1. This recommendation was accepted and by a letter dated 29.8.1995, the members of the Supreme Court Bar Association were informed about it. we quote below the said letter dated 29.8.95:

"F.No.25/LCA/SCA/Genl.
SUPREME COURT OF INDIA

Dated: 29th August, 1995

From: P.N. Jain
Asstt. Registrar (Admn.)
To

The Hony, Secretary,
Supreme Court Bar Association,
New Delhi.

Sir,

As you are aware, the Allotment Committee had recommended to invite applications from (1) Senior Advocates and (2) Junior Advocates (Non-Advocates-on-Record) for preparing fresh separate panels and (3) from Advocates-on-Record for updating the existing panel for allotment of Lawyers' Chambers and that the allotment be made in accordance with the roster maintained in the following order:

"The first four vacancies be allotted to Advocate-on-Record, the fifth vacancy to the Junior Advocates (non-Advocates-on-Record), sixth, seventh and eighth vacancies to Advocates-on-Record, 9th vacancy to the Junior Advocates (non-Advocates-on-Record) and tenth to the senior Advocates."

The above recommendations have been approved by the Hon'ble Chief Justice of India. The Procedure/Criteria laid down for the purpose is as under:

1. SENIOR ADVOCATES:

- (a) Senior Advocates who are mainly and regularly practising in the Supreme Court and are members of the Supreme Court Association.
- (b) they must have filed the minimum number of fifty appearances (Admission and regular hearing matters excluding CMPs and Cr.M.Ps) per year during the preceding two calendar years prior to the date of application.
- (c) Subject to the above two requirements being complied with, the allotment shall be made based on priority of the date of their being designated as Senior Advocate. A panel will be prepared accordingly.

2. Advocates-on-Record:

(a) An advocate-on-Record of three years standing only will be eligible for allotment or joint allotment of a chamber.

(b) The Advocate-on-Record must have filed (or entered appearances on behalf of respondents) on an average 20 cases (i.e. admission/regular matters and not CMPs./Cr.M.P.s) per annum, in the course of preceding two years (batch of cases shall be treated as a single case).

(c) subject to the above two requirements being complied with, the allotment shall be made according to the date of seniority i.e. the date of registration as Advocate-on-Record. The names of the eligible persons shall be added at the bottom of the existing approved panel.

(d) Those persons who have been allotted a chamber in Delhi High Court Compound may not be considered for allotment of a chamber in the Supreme Court.

(e) The filing of Advocates for Government filing shall be excluded.

3. JUNIOR ADVOCATES (NON ADVOCATES-ON-RECORD):

- (a) All Junior Advocates (Non-Advocates-On-Record) who are mainly and regularly practising in the Supreme Court and are the members of the Supreme Court Bar Association.

(b) they must have put in not less than fifty appearances (Admission and Regular Hearing matters excluding C.M.Ps. and Cr. M.Ps.) each year during the preceding two years prior to the date of inviting applications in the Supreme Court of India.

(c) Subject to the above two requirements being complied with, the seniority of such persons shall be based on the date of their present admission to the active membership of the Supreme Court Bar Association. Pursuance to the above, applications are invited for the abovesaid purpose. The period of two years for which the number of filing/appearances have to be furnished will be from 1.1.1993 to 31.12.1993 and from 1.1.1994 to 31.12.1994.

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Your faithfully
sd/-

Assistant Registrar (Admn)."

It was submitted that the ratio of 7:2:1 is inconsistent with Rule 4, which contemplates allotment of chambers firstly to the Advocates-on-Record and only in exceptional cases to others. It was submitted that there is a reason behind this Rule. Under the Supreme court Rules, 1966 the Advocates-on-Record hold a special position and are subject to certain obligations and duties. The Senior Advocates and non-Advocates-on-Record are under no such obligation. Thus the requirement and necessity of Advocates-on-Record to have a chamber is much greater and, therefore, so long as their necessity is not satisfied no chamber should be allotted to Senior Advocates and non-advocates-on-Record. Rule 4 recognizes this necessity and, therefore, provides that the Advocates-on-Record shall have first priority in the matter of allotment of chambers. It was not disputed by the learned counsel appearing of behalf of Senior Advocates and non-Advocates-on-Record that the Advocates-on-Record have a greater necessity to have chambers but it was contended that it would be unreasonable to say that no chamber should be allotted to Senior Advocates or a non-Advocate-on-Record till all the Advocates-on-Record are provided with chambers. It was also submitted by them that Rule 4 was never understood to mean that no chamber should be provided to a Senior Advocate or a non-Advocate-on-Record till all the Advocates-on-Record are provided with chambers. In our opinion, Rule 4 cannot be read the way in which the Advocates-on-Record wants us to read it. Rule 4 only indicates the manner in which the discretionary power to allot chambers is going to be exercised. The rule itself contemplates allotment of chambers to persons falling under categories 2 and 3 in exceptional cases. Chambers were in fact allotted from time to time to the Advocates falling under categories 2 and 3. That had led to some dissatisfaction amongst the Advocates-on-Record as they feel that some of those allotments were not proper. It appears that the Allotment Committee recommended fixing a ratio of 7:2:1 and also the manner in which the allotment should be done in accordance with the said ratio by suggesting a roster, with a view to remove the cause for the dissatisfaction amongst the Advocates-on-Record. It appears that since the recommendation came from the Allotment Committee which mainly consists of the members of the Supreme Court Bar Association and was found to be reasonable and likely to satisfy the needs of all the three categories of the Advocates the Hon'ble the Chief Justice of India accepted the same. On consideration of all the relevant aspects it is not possible to agree with the

submission that non-advocates-on-Record and Senior Advocates do not have any need to have chambers in the Supreme Court premises. While allotting chambers what is required to be considered is the relative needs of all the three categories of advocates. Considering the object of providing facility of chambers and the need to balance the interests of all the three categories of advocates the ratio of 7:2:1 cannot be regarded as unreasonable or arbitrary. Therefore, the contention that Hon'ble the Chief Justice of India in doing so has acted unreasonably must be rejected.

Some other grievances were also made at the time of hearing of these petitions. They are more in the nature of complaints and suggestions and, therefore, they can properly be dealt with by the Allotment Committee and ultimately by the Hon'ble the Chief Justice of India. We may only suggest that Hon'ble the Chief Justice of India, if he deems it proper, may appoint a Committee of two or three Hon'ble Judges of this court to look into the suggestions made for modification of the Rules and the new principle to help him in taking the final decision in the matter.