

Constitutional Writ
PRESENT: THE HON'BLE MR JUSTICE JAYANTA KUMAR BISWAS
JUDGMENT ON: 18.02.2010.

W.P. No. 21795 (W) of 2007
Sri Mrinal Kanti Mondal
v.

The State of West Bengal & Ors.

Point:

APPOINTMENT: Person not in practice as an advocate for at least seven years- Whether be appointed as an additional public prosecutor - Code of Criminal Procedure, 1973, S. 24.

Fact: The petitioner by filing the instant writ application has sought for a direction canceling the appointments of the private respondents for not fulfilling the eligibility criteria as additional public prosecutors and the panel of names of persons prepared by the District Magistrate under the provisions of the Code of Criminal Procedure, 1973 which was approved by the Legal Remembrancer, West Bengal.

Held: It is evident from the provisions of sub-ss. (3),(4),(5) and (7) of s.24 of the Code of Criminal Procedure, 1973 that a person shall be eligible to be appointed as an additional public prosecutor under s.24(3) and can be appointed as such only if (a) he has been in practice as an advocate for not less than seven years and (b) his name appears in the panel of names prepared by the district magistrate under s.24(4). Hence name of a person not in practice as an advocate for at least seven years cannot be included by the district magistrate in a panel prepared under s.24(4).

Paragraph – 8

Under the circumstances, in the face of the specific allegation made by the petitioner in his representation that names of the persons pointed out by him were put on the panel in contravention of the provisions of s.24(7), the district magistrate incurred an obligation to ascertain the correctness of the allegation closely examining all related papers and particulars, and to modify the panel deleting the names of the ineligible persons, if any.

Paragraph – 9

Mr Satyajit Mondal, Mr Amar Nath Sen and Mr Sanjib Dutta, advocates, for the petitioner. Mr Rajdeep Biswas, advocate, for the state.

The Court: 1. The petitioner in this art.226 petition dated September 27, 2007 is seeking a mandamus cancelling (a) the appointments of the sixth – eighteenth respondents as additional public prosecutors for the district South 24 Parganas, and (b) the panel of names of persons prepared by the district magistrate under s.24(4) of the Code of Criminal Procedure, 1973 and approved by the Legal Remembrancer, West Bengal.

2. In consultation with the sessions judge the district magistrate prepared the panel of names in which name of the petitioner, who was a candidate, was not included. The panel was approved by the legal remembrancer who communicated his decision to the public prosecutor by a memo no. 1642 dated May 14, 2007. Feeling aggrieved the petitioner submitted a representation to the legal remembrancer and forwarded a copy thereof to the sessions judge and the district magistrate. Since no action was taken, he brought this petition.

3. One of the allegations made in the petitioner’s complaint is as follows:

“VIII) List of advocates in serial NO. 26,32,34,39,40,44,53,55,58,59,65,70,74,95,98, 108,120,121,122,132,134,138,140 in the revised panel do not deserve to be in the said panel as they less than Seven years practice.”

Ground (VI) taken in the petition is as follows:

“VI. For that the appointment of private respondents violates the Sub-Section 7 of Section 24 of the Cr. P.C. and the said appointment should be cancelled.”

4. The district magistrate has filed an opposition dated June 8, 2009. In his opposition the district magistrate has not said anything at all about the petitioner’s specific allegation made in para.(VIII) of his representation and contention raised in ground (VI) of the petition. The district magistrate has simply said (in para.10) that there “was no violation of the statutory norms in the preparation of the panels in question.”

5. Mr Mondal, counsel for the petitioner, has submitted that names of a large number of persons including the private respondents were put on the panel of names though they did not have the requisite minimum seven-year practice.

6. Mr Biswas, counsel for the state, has submitted as follows. The provisions of sub-s.(7) of s.24 do not apply to the preparation of a panel of names by the district magistrate under sub-s.(4) of s.24. They apply only when a public prosecutor or additional public prosecutor is appointed under sub-s.(1) or sub-s.(2) or sub-s.(3) or sub-s.(6) of s.24. Hence if name of any person in practice as an advocate for less than seven years was included in the panel, it cannot be said that the panel was prepared in contravention of the provisions of sub s.(7) of s.24.

7. It is presumably giving the same interpretation that Mr Biswas has given to the provisions of s.24 that the legal remembrancer, the sessions judge and the district magistrate carried out the statutory process for preparation of the panel of names in question. In my opinion, all concerned gave a wrong interpretation to the provisions of s.24(7) which are as follows:

“(7) A person shall be eligible to be appointed as a Public Prosecutor or an Additional Public Prosecutor under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (6), only if he has been in practice as an advocate for not less than seven years.”

Sub-sections (3),(4) and (5) of s.24 are set out below:

“(3) For every district, the State Government shall appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors for the district:

Provided that the Public Prosecutor or Additional Public Prosecutor appointed for one district may be appointed also to be a Public Prosecutor or an Additional Public Prosecutor, as the case may be, for another district.

(4) The District Magistrate shall, in consultation with the Sessions Judge, prepare a panel of names of persons, who are, in his opinion fit to be appointed as Public Prosecutor or Additional Public Prosecutors for the district.

(5) No person shall be appointed by the State Government as the Public Prosecutor or Additional Public Prosecutor for the district unless his name appears in the panel of names prepared by the District Magistrate under sub-section (4).”

8. It is evident from the provisions of sub-ss. (3),(4),(5) and (7) of s.24 of the Code of Criminal Procedure, 1973 that a person shall be eligible to be appointed as an additional public prosecutor under s.24(3) and can be appointed as such only if (a) he has been in practice as an advocate for not less than seven years and (b) his name appears in the panel of names prepared by the district magistrate under s.24(4). Hence name of a person not in practice as an advocate for at least seven years cannot be included by the district magistrate in a panel prepared under s.24(4).

9. Under the circumstances, in the face of the specific allegation made by the petitioner in his representation that names of the persons pointed out by him were put on the panel in contravention of the provisions of s.24(7), in my opinion, the district magistrate incurred an obligation to ascertain the correctness of the allegation closely examining all related papers and particulars, and to modify the panel deleting the names of the ineligible persons, if any. It is important to note that the private respondents have chosen not to appear.

10. For these reasons, I dispose of the petition ordering as follows. The district magistrate shall ascertain whether name of any person who was not in practice as an advocate for at least seven years was put on the panel prepared by him under s.24(4). Within three weeks from the date of communication of the order he shall publish the modified panel deleting the names of the ineligible persons. If any process is initiated for inclusion of more names in the panel, then cases of all including the petitioner, who may apply, shall be considered according to law. No costs. Certified xerox according to law.

(Jayanta Kumar Biswas, J.)