

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.317 OF 2002

Mr. Jos. Peter D'Souza,
1/S2 Garden Centre (II),
Near Police Station,
Mapuca, Goa 403 507

... PETITIONER

VERSUS

1. Mr. Vilas P. Thali,
having his office at
S-3, Mandovi Apartments,
Dr. Dada Vaidya Road,
Panaji, Goa;

2. The Law Secretary,
Government of Goa,
Secretariat,
Panaji, Goa;

3. The State of Goa,
through Chief Secretary,
Government of Goa,
Secretariat,
Panaji, Goa

...RESPONDENTS

Petitioner in person.

Mr. S.K. Kakodkar, Sr. Advocate, with Mr. Joel J.
D'Souza, Advocate, for the Respondent No.1.

Mr. A.N.S. Nadkarni, Advocate General, with Mr. H.D.
Naik, Addl. Government Advocate, for the Respondents
No.2 and 3.

CORAM : P.V. KAKADE &
P.V. HARDAS, JJ.

DATED : OCTOBER 28, 2002.

ORAL ORDER

Heard the Petitioner in person, Mr. S.K.
Kakodkar, Sr. Advocate, for the Respondent No.1 and
the learned Advocate General for the Respondents

No.2 and 3.

2. Rule.

3. In the meantime, in view of the facts and circumstances revealed at this prima facie level and also in view of the admission on behalf of the State, the post of Additional Advocate General is not a Constitutional post as envisaged by Article 165 of the Constitution of India, and as such, the facts revealed to the Court give rise to anxiety and apprehension in our minds regarding the manner in which the non-Constitutitonal post is being equated with the Constitutional post by the State Government in relation to the treatment given and the facilities afforded to Respondent No.1 in his capacity as Additional Advocate General, including in respect of the vehicle, use of red light, structure of payment of fees and availability of juniors at the cost of public exchequer.

We accept the statement of the learned Advocate General that the State Government would be certainly looking into all these aspects so as to realign the entire functioning of the Office of the Respondent No.1. It is stated on behalf of the State that the Respondent No.1 has stopped use of

red light on his official vehicle in view of the clear prohibition regarding the relevant aspect in Notification issued by the State Government. Similarly, we accept the statement of the learned Advocate General that the bills regarding payment of fees of Respondent No.1 are withheld for the purpose of scrutiny. We may note that such scrutiny shall also extend to the fees not only paid to Respondent No.1 in this regard, but also to his juniors in their official capacity.

So far as Circulars issued on behalf of the State Government are concerned, we have no doubt that Circular dated 6-02-2002 is very much intended to streamline the administration of the Offices of the Law Officers in general. However, what it shows is that complete go-by is given by the State Government to the Constitutional functionary such as Advocate General while issuing certain directions and to that effect the said Circular shall be re-considered. Similarly, the State Government would be well advised to withhold the subsequent Circulars dated 2-04-2002 and 25-02-2002 along with the Circular dated 29-11-2001 so far as they sidetrack the authority of the Advocate General.

With regard to the acts of Respondent No.1

purported to be under Section 24 of the Criminal Procedure Code are concerned, it is needless to mention that he cannot act as Public Prosecutor until and unless authorised by the State Government by due Notification contemplated by the said provisions.

In this regard we may further note that the Petitioner is at liberty to move the State Government in the meantime to make his representation regarding the aspects involved in this Petition so as to get necessary details for his purposes and the State Government shall make available all the relevant files and bills of fees etc. to the Petitioner for relevant scrutiny in that regard. All contentions of all the parties are kept open. Matter to come up on Board after Vacation.

Authenticated copy to be provided to all the concerned parties.

P.V. KAKADE, J.

P.V. HARDAS, J.