

v.

STATE OF U.P.

JUNE 15. 1993

[KULDIP SINGH AND N.P. SINGH, JJ.]

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Code of Criminal Procedure, 1973—Section 24 read with Paras 7.06, 7.08 of the Legal Remembrancer Manual—Renewal of term of District Government Counsel Procedure under the Manual—Requirements under S.24 of the Code.

Code of Criminal Procedure, 1973—Section 24—Public Prosecutor or Additional Public Prosecutor—Term of—Extension of renewal—Scope of—Duty of Sessions Judge and District Magistrate—Panel of lawyers—Preparation—Necessity of.

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Constitution of India, 1950—Article 136—Appeal—Assistant District Government Counsel's names recommended by Sessions Judge for extension of their tenures not recommended by District Magistrate—Rejection of Sessions Judge's recommendation by State—Legality of.

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Civil Services—Assistant District Government Counsel's names recommended by sessions Judge for extension of their tenures not recommended by District Magistrate—Rejection of Sessions Judge's recommendation by State—Legality of.

E

Code of Criminal Procedure, 1973—Section 24(4)—Consideration of suitability of a person to the post of District Government Counsel by District Magistrate—Judicial review by Courts—Scope of.

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C.A. Nos. 722 and 723 of 1993.

On 25.2.91 the appellants except appellant No. 3 were appointed as Assistant District Government Counsel (Criminal) in accordance with the provisions of Section 24 of the Criminal Procedure Code and the Legal Remembrancer Manual. The appellant No.3 was appointed on 13.12.1990. The last date of the tenure of the appellants, except appellant No.3, was 31.12.1991, whereas the tenure of appellant No. 3 was upto 13.12.1991. Before

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- A the expiry of their terms, the District Judge, preparing two lists, 'A' and 'B' recommended the appellants' names for extension of their tenures. List 'A' contained the names of Lawyers (including the appellants), whose work and conduct was approved for their extension, whereas List 'B' contained the remaining names of the lawyers (including appellants in C.A. Nos. 386, 387/1993) who were considered as 'average lawyers'. The District Judge requested the District Magistrate to send his recommendation to the State Government.

C The District Magistrate did not recommend the appellants' names as their reputation, professional work, behaviour and conduct was not found in accordance with public interest.

On 28.12.1991 the State Government extended the terms of the appellants till further orders. Later without assigning any reason, the extension recommended by the District Judge was rejected by the State Government.

- D The appellants filed writ petitions in the High Court against the Government's decision. The High Court dismissed their writ applications, against which the present appeals were filed by special leave before this Court.

C.A. Nos. 386 & 387 OF 1993.

- E The appellants' names were included in the List 'B' prepared by the District Judge. The State Government rejected the recommendation of the District Judge, without assigning any reason. The writ petitions preferred by them in the High Court were dismissed. Hence these appeals by special leave.

- F As there was a common issue arose in these appeals, same were heard and decided together.

G The appellants contended that in view of Para 7.06(2) of the Legal Remembrancer Manual the appointment of any legal practitioner as a District Government Counsel did not automatically come to an end.

- H The State submitted that as Section 24(4) of the Code of Criminal Procedure vested power in the District Magistrate to consider the suitability of the person concerned, for appointment, according to his opinion, as such there was not much scope of judicial review by Courts, unless a clear case of malice on the part of the District Magistrate was made out.

Allowing the Civil Appeals Nos. 722 and 723 of 1993 and dismissing the Civil Appeal Nos. 386 and 387 of 1993, this Court:

HELD : 1.1. When sub-section (4) and sub-section (5) of Section 24 of the Code of Criminal Procedure, speak about preparation of a panel, out of which appointments against the posts of Prosecutor or Additional Public Prosecutor have to be made, then the Sessions Judge and the District Magistrate are required to consult and discuss the names of the persons fit to be included in the panel and to include such names in the panel.

1.2. The expressions "panel of names of persons", do not mean that some names are to be suggested by the Sessions Judge and some comments are to be made, in respect of those names by the District Magistrate, without proper consultation and discussion over such names. The statutory mandate ought to have been complied with by the District Magistrate and the Sessions Judge in its true spirit.

1.3. Section 24 of the Code does not speak about the extension or renewal of the terms of the Public Prosecutor or Additional Public Prosecutor. But after the expiry of the term of the appointment of persons concerned, it requires the same statutory exercise, in which either new persons are appointed or those who have been working as Public Prosecutor or Additional Public Prosecutor, are again appointed by the State Government, for a fresh term. The procedure prescribed in the Manual - to the extent - it is not in conflict with the provisions of Section 24, shall be deemed to be supplementing the statutory provisions. But merely because there is a provision for extension or renewal of the term, the same cannot be claimed as a matter of right.

1.4. While exercising the power of judicial review even in respect of appointment of members of the legal profession as District Government Counsel, the Court can examine whether there was any infirmity in the "decision making process". Of course, while doing so, the Court cannot substitute its own judgment over the final decision taken in respect of selection of persons for those posts.

Chief Constable of the North Wales Police v. Evans, [1982] 3 All E.R. 141, referred to.

1.5. In the facts of the present case, the procedure prescribed by Section 24 of the Code have not been followed by the District Magistrate. There is

A nothing on the records of the case to show that any panel, as required by sub-section (4) of Section 24, was prepared by the District Magistrate in consultation with the District & Sessions Judge. The District Magistrate simply made some general comment in respect of the appellants, when the District & Sessions Judge had put them in List 'A' of his recommendation. This shall not amount to either the compliance of sub-section (4) of Section 24 of the Code or Para 7.06(2) of the Manual. It appears there has been no effective or real consultation between the Sessions Judge and the District Magistrate for preparation of the panel, as contemplated by sub-section (4) of Section 24 of the Code.

C 1.6. The members of the legal profession are required to maintain high standard of legal ethics and dignity of profession. They are not supposed to solicit work or seek mandamus from courts in matters of professional engagements.

D 1.7. In view of the strong recommendation about the quality of the appellant's professional work, the District Magistrate should have applied his mind in consultation with the Sessions Judge, in respect of each individual case, instead of making a general and identical comment against all the appellants.

E 1.8. As the District Magistrate has not performed his statutory duty as enjoined by law, the appeals of the appellants have to allowed.

F 1.9. The District Magistrate is directed to perform his statutory duty afresh, in accordance with the requirement of Section 24 of the Code read with the relevant paragraphs of Chapter VII of the Manual, which are not inconsistent with Section 24 of the Code, so far the appellants are concerned, if the vacancies are still there. The necessary steps shall be taken preferably within four months from the date of this judgment. The State Government shall thereafter perform its part in accordance with Section 24 and different paragraphs of the Manual which are applicable in the facts and circumstances of the case.

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Kumari Shrilekha Vidyarthi v. State of U.P., [1991] 1 SCC 212, referred to.

H 2. The District & Sessions Judge, who is required to express his opinion on the merit and the conduct of the persons recommended for appointment or extension of the period as District Government Counsel, has expressed the

opinion that appellants (in C.A.s. Nos. 386-387 of 93) are "average lawyers", and has put them in List 'B'. In other words, neither the District & Sessions Judge has recommended the case of the appellants of these appeals for extension nor the District Magistrate. Their case cannot be treated at par with the appellants of the other appeals. In such a situation, no useful purpose will be served by directing the District Magistrate to perform his statutory duty, as required by sub-section (4) of Section 24 of the Code again, even in respect of these appellants.

3. Although power has been vested in a particular authority, in subjective terms, still judicial review is permissible.

Barium Chemicals Ltd. v. Company Law Board, AIR [1967] SC 295; *State of Assam v. Bharat Kala Bhandar Ltd.*, AIR [1967] SC 1766; *Rohtas Industries Ltd. v. S.D. Agarwal*, AIR [1969] SC 707; *The Purtabpur Company Ltd. v. Can e Commissioner of Bihar*, AIR [1970] SC 1989 and; *M.A. Rasheed v. The State of Kerala*, AIR [1974] SC 2249, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 722 and 723 of 1993.

From the Judgment and Order dated 13.11.92 of the Allahabad High Court in W.P. Nos. 688 & 1246 of 1992.

WITH

CIVIL APPEALS NOS. 386 and 387 of 1993

From the Judgment and Order dated 13.11.92 of the Allahabad High Court in W.P. Nos. 819 and 888 of 1992.

Rajiv Dhawan, P.K. Dey and Rakesh Gosian, Ms. Rani Jethmalani, (N.P.) for the Appellants in C.A. Nos. 722-23/93.

R.P. Saxena for the Appellants in C.A. Nos. 386-87/93.

Yogeshwar Prasad and Ms. Rachna Gupta for the Respondent.

The Judgment of the Court was delivered by

A **N.P. SINGH. J** The appellants in Civil Appeals Nos. 722 & 723 of 1993 had been appointed as Assistant District Government Counsel (Criminal) to appear in different criminal cases, on behalf of the State, in different Courts in the District of Moradabad. They filed the connected Writ Applications before the High Court against the decision of the State Government, refusing to extend their term for a further period of three years, which were dismissed by the High Court.

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It appears that the appellants, except appellant No. 3, Gopal Sharma, had been appointed by Government Order dated 25.2.91 as Assistant District Government Counsel (Criminal) in the District of Moradabad, in accordance with the provisions of Section 24 of the Criminal Procedure Code (hereinafter referred to as "the Code") and the Legal Remembrancer Manual (hereinafter referred to as "the Manual") against the substantive vacancies. Appellant No. 3, however, had been appointed on 13.12.1990. The last date of the tenure of the appellants, other than appellant No. 3, as mentioned in the aforesaid Government Order dated 25.2.1991 was 31.12.1991. The tenure of appellant No. 3 was up to 13.12.1991. It is not in dispute that before the expiry of the term aforesaid, the District Judge, Moradabad, by his letter dated 27.12.1991 recommended the names of appellants for extension of their terms. The District Judge prepared two lists i.e. 'A' and 'B'. List 'A' contained the name of those lawyers "whose work and conduct has been approved for their extension as Government Counsel", whereas List 'B' contained the names of the remaining Government Counsel, who in the opinion of the District Judge were "average lawyers". The names of the appellants are in List 'A'.

D . The District Judge requested the District Magistrate, Moradabad, to send his recommendation to the State Government for extension of the term of the Government Counsel, mentioned in List 'A'. The District Magistrate, after receipt of the recommendation of the District Judge aforesaid, by a communication dated 2.1.92, did not recommend the names of the appellants, for extension of their terms, saying that on the inquiry at his level, "reputation, professional work, behaviour and conduct of the above mentioned Government Counsel was not found in accordance with public interest". It may be mentioned that on 28.12.91, the State Government had extended the terms of the appellants till further orders. Ultimately, without assigning any reason, the extension recommended by the District Judge was rejected by the State Government, which decision is the subject matter of the controversy in the present appeals.

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In the State of U.P., the Manual is an authoritative compilation of the government orders and instructions for the conduct of legal affairs of the State Government. Para 1.06 of Chapter VII gives the details of the Law Officers of the Government, which includes the Government Counsel (Civil, Revenue, Criminal)

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along with many others like Judicial Secretary and Legislative Secretary. The Chapter VII of the Manual contains the procedure in respect of appointment and conditions of engagements of District Government Counsel. The District Officer is required to consider all the applications received, in consultation with the District Judge and to submit in order of preference the names of the legal practitioners, along with the opinion of the District Judge on the suitability and merit of each candidate to the State Government, giving due weightage to the claim of the existing incumbents, if any. After the receipt of such recommendations, the Legal Remembrancer is required to submit the said recommendations with his own opinion for the orders of the State Government.

In Para 7.06 of the Manual, the procedure regarding the appointment and renewal has been prescribed :-

"7.06. Appointment and renewal - (1) The legal practitioner finally selected by the Government may be appointed District Government Counsel for one year from the date of his taking over charge.

(2) At the end of the aforesaid period, the District Officer after consulting the District Judge shall submit a report on his work and conduct to the Legal Remembrancer together with the statement of work done in Form No. 9. Should his work or conduct be found to be unsatisfactory the matter shall be reported to the government for orders. If the report in respect of his work and conduct is satisfactory, he may be furnished with a deed of engagement in Form No. 1 for a term not exceeding three years. On his first engagement a copy of Form No. 2 shall be supplied to him and he shall complete and return it to the Legal Remembrancer for record.

(3) The appointment of any legal practitioner as a District Government Counsel is only professional engagement terminable at will on either side and is not appointment to a post under the government. Accordingly the government reserves the power to terminate the appointment of any District Government Counsel at any time without assigning any cause."

Para 7.08 contains the procedure for renewal after expiry of the original term :-

"7.08. Renewal of term - (1) At least three months before the expiry

A of the term of a District Government Counsel, the District Officer shall after consulting the District Judge and considering his past record of work, conduct and age, report to the Legal Remembrancer, together with the statement of work done by him in Form No.9 whether in his opinion the term of appointment of such counsel should be renewed or not. A copy of the opinion of the District Judge should also be sent along with the recommendations of the District Officer.

B (2) Where recommendation for the extension of the term of a District Government Counsel is made for a specified period only, the reasons therefor shall also be stated by the District Officer.

C (3) While forwarding his recommendation for renewal of the term of a District Government Counsel-

D (i) the District Judge shall give an estimate of the quality of the Counsel's work from the judicial standpoint, keeping in view the different aspects of a lawyer's capacity as it is manifested before him in conducting State cases, and specially his professional conduct.

E (ii) the District Officer shall give his report about the suitability of the District Government Counsel from the administrative point of view, his public reputation in general, his character, integrity and professional conduct.

F (4) If the government agrees with the recommendations of the District Officer for the renewal of the term of the Government Counsel, it may pass orders for re-appointing him for a period not exceeding three years.

G (5) If the government decides not to re-appoint a Government Counsel, the Legal Remembrancer may call upon the District Officer to forward fresh recommendations in the manner laid down in para 7.03.

H (6) The procedure prescribed in this para shall be followed on the expiry of every successive period of renewed appointment of a

District Government Counsel.

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Note : The renewal beyond 60 years of age shall depend upon continuous good work, sound integrity and physical fitness of the Counsel."

It was pointed out, on behalf of the appellants, that any legal practitioner finally selected by the Government may be appointed as District Government Counsel for one year from the date of his taking over charge, but in view of Para 7.06 of the Manual, at the end of the aforesaid period, the District Magistrate, after consulting the District Judge has to submit a report on his work and conduct to the Legal Remembrancer in the form prescribed. If the report in respect of his work and conduct is satisfactory, then such Counsel shall be furnished with a deed of engagement in form No.1 for a term not exceeding three years. Para 7.08, of the Manual, contains the procedure for renewal of the term of the District Government Counsel after the expiry of original term. It requires the District Officer at least three months before the expiry of the term of a District Government Counsel, to report to the Legal Remembrancer, after consulting the District Judge and considering the past record of work, conduct and age of such District Government Counsel. If the Government agrees with the recommendation, it may pass an Order re-appointing him for a period not exceeding three years.

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The stand of the appellants is that, in view of Para 7.06(2), the appointment of any legal practitioner as a District Government Counsel, does not automatically come to an end, rather it indicates an element of continuity and that is why Para 7.06(2) requires the District Officer, at the end of period of one year to submit a report, after consulting the District Judge concerned, in respect of the work and conduct of such District Government Counsel, to the Legal Remembrancer, in a form prescribed. If the report in respect of work and conduct is satisfactory, then such District Government Counsel shall be furnished with a deed of engagement, in a form prescribed for a term not exceeding three years. As such after the period of one year, if the engagement for a further period upto three years is not given, it amounts to a stigma.

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On behalf of the appellants, attention of this Court was drawn to a letter addressed to the District Magistrate by Dr. Nepal Singh, M.L.C., the District President of the party then in power, recommending the names of other Government Counsel for renewal/extension of their term. It was pointed out that, in respect of all those persons, The District Magistrate has recommended for extension. There is, however, no material before us to show that the District

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A Magistrate was influenced by the said letter in any manner. Apart from that, the persons so recommended by the District Magistrate were not impleaded as respondents to the Writ Applications. As such we are not inclined to go into this aspect

B The different paragraphs of the Manual aforesaid were examined in detail in the case of *Kumari Shrilekha Vidyarthi v. State of U.P.*, [1991] 1 SCC 212, in connection with an Order dated February 6, 1990, issued by the State of U.P., terminating the appointments of all Government Counsel (Civil, Criminal and Revenue), in all the districts of the State of U.P. with effect from February 28, 1990 and directing the preparation of fresh panels for making appointments in places of the existing incumbents. While quashing such general order it was said:-

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"Viewed in any manner, the impugned circular dated February 6, 1990 is arbitrary. It terminates all the appointments of Government Counsel in the districts of the State of Uttar Pradesh by an omnibus order, even though these appointments were all individual. No common reason applicable to all of them justifying their termination in one stroke on a reasonable ground has been shown. The submission on behalf of the State of Uttar Pradesh at the hearing that many of them were likely to be re-appointed is by itself ample proof of the fact that there was total non-application of mind to the individual cases before issuing the general order terminating all the appointments. This was done in spite of the clear provisions in the L.R. manual laying down detailed procedure for appointment, termination and renewal of tenure and the requirement to first consider the existing incumbent for renewal of his tenure and to take steps for a fresh appointment in his place only if the existing incumbent is not found suitable in comparison to more suitable persons available for appointment at the time of renewal. In the case of existing appointees, a decision has to be first reached about their non-suitability for renewal before deciding to take steps for making fresh appointments to replace them. None of these steps were taken and no material has been produced to show that any existing incumbent was found unsuitable for the office on objective assessment before the decision to replace all by fresh appointees was taken. The prescribed procedure laid down in the L.R. Manual which has to regulate exercise of this power was totally ignored."

H In the present case, it appears to be an admitted position that appointments of the appellants as Assistant District Government Counsel (Criminal) is governed

by Section 24 of the Code, as well as different paragraphs of Chapter VII of the Manual. It was not disputed on behalf of the State, that appellants shall be deemed to be Additional Public Prosecutors within the meaning of Section 24 of the Code, although in the order of appointment they have been designated as Assistant District Government Counsel (Criminal). The procedure prescribed in the Manual can be observed and followed as supplemental to the provisions of Section 24 of the Code. Needless to say that, if there is any conflict, then Section 24 of the Code being statutory in nature will override the procedure prescribed in the Manual. The relevant part of Section 24 is as such :-

24. Public Prosecutors -(1) For every High Court, the Central Government or the State Government shall, after consultation with the High Court, appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors, for conducting in such Court, any prosecution, appeal or other proceedings on behalf of the Central Government or State Government, as the case may be.

(2)

(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 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 Prosecutors 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)."

The Code prescribes the procedure for appointment of Public Prosecutor and Additional Public Prosecutor, for the High Court and the District Courts by the State Government. The framers of the Code, were conscious of the fact, that the Public Prosecutor and the Additional Public Prosecutor have an important role,

- A while prosecuting, on behalf of the State, accused persons, who are alleged to have committed one or the other offence. Because of that, provisions have been made for their selection in the Code. It is for the Sessions Judge to assess the merit and professional conduct of the persons recommended for such appointments and the District Magistrate to express his opinion on the suitability of persons so recommended, from the administrative point of view. Sub-section (5) of Section 24
- B provides that no person shall be appointed by the State Government as the Public Prosecutor or as an Additional Public Prosecutor "unless his name appears in the panel of names prepared by the District Magistrate under sub-section (4)". The aforesaid section requires an effective and real consultation between the Sessions Judge and the District Magistrate, about the merit and suitability of person to be appointed as Public Prosecutor or as an Additional Public Prosecutor. That is why
- C it requires, a panel of names of persons, to be prepared by the District Magistrate in consultation with the Sessions Judge. The same is the position so far the Manual is concerned. It enumerates in detail, how for purpose of initial appointment, extension or renewal, the District Judge who is also the Session Judge, is to give his estimate of the quality of the work of the Counsel from the judicial standpoint and the District Officer i.e. the District Magistrate is to report about the suitability, of such person, from administrative point of view.
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- On behalf of the State, our attention was drawn to the expression "in his opinion" occurring in sub-section (4) of Section 24 of the Code. It was urged that as the Code vests power in the District Magistrate to consider the suitability of the person concerned, for appointment, according to his opinion, there is not much scope of judicial review by Courts, unless a clear case of malice on the part of the District Magistrate is made out. In view of the series of judgments of this Court in *Barium Chemicals Ltd. v. Company Law Board*, AIR 1967 SC 295; *State of Assam v. Bharat Kala Bhandar Ltd.*, AIR 1967 SC 1766; *Rohtas Industries Ltd. v. S.D. Agarwal*, AIR 1969 SC 707; *The Purnabpur Company Ltd. v. Cane Commissioner of Bihar*, AIR 1970 SC 1896 and *M.A. Rasheed v. The State of Kerala*, AIR 1974 SC 2249, it is almost settled that, although power has been vested in a particular authority, in subjective terms, still judicial review is permissible.
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- In the present case the District & Session Judge strongly recommended extension for the appellants, saying that so far their work and conduct were concerned, the same had been approved. But the District Magistrate, simply said that on the inquiry at his level "reputation, professional work, behaviour and conduct of the appellants as government counsel was not found in accordance with the public interest". The quality of the Counsel's work has to be judged and assessed
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by the District & Sessions Judge. The District Magistrate is required to consider the suitability of such person, from the administrative point of view. According to us, in view of the strong recommendation about the quality of the appellants' professional work, the District Magistrate should have applied his mind in consultation with the Sessions Judge, in respect of each individual case, instead of making a general and identical comment against all the appellants.

Apart from that the mandate of sub-section (4) of Section 24 is that "the District Magistrate shall, in consultation with the Sessions Judge, prepare a panel of names of persons". Sub-section (5) of Section 24 prescribes a statutory bar that 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)". When sub-section (4) and sub-section (5) of Section 24 of the Code, speak about preparation of a panel, out of which appointments against the posts of Prosecutor or Additional Public Prosecutor have to be made, then the Sessions Judge and the District Magistrate are required to consult and discuss the names of the persons fit to be included in the panel and to include such names in the panel. The expressions "panel of names of persons", do not mean that some names are to be suggested by the Sessions Judge and some comments are to be made, in respect of those names by the District Magistrate, without proper consultation and discussion over such names. The statutory mandate ought to have been complied with by the District Magistrate and the Sessions Judge in its true spirit. In the facts of the present case, no such panel appears to have been prepared by the District Magistrate in terms of sub-section (4) of Section 24. As Section 24 of the Code does not speak about extension or renewal of the term of the person so appointed, the same procedure, as provided under sub-section (4) of Section 24 of the Code, has to be followed. In the present case the District Magistrate, instead of having an effective and real consultation with the District & Sessions Judge, simply made some vague and general comments against the appellants, which cannot be held to be the compliance of the requirement of sub-section (4) of Section 24.

In the case of *Kumari Shrilekha Vidyarthi* (supra), this Court was not concerned with the question regarding the extension/renewal of the terms of the Government Counsel. The primary question which was examined by this Court in that case, was as to whether it was open to the State Government by the impugned circular dated February 6, 1990, to terminate appointments of all the Government Counsel in the different districts of the State, by an omnibus order, even though, those appointments were all individual. It was held that any such exercise of power by the State Government cannot satisfy the test of Article 14 of the Constitution

- A and, as such, was unreasonable and arbitrary. In that connection reference was made to the Manual aforesaid and it was pointed out that the said Manual has laid down detailed procedure for appointment, termination and renewal of the tenure of the District Government Counsel. It was pointed out, that different paragraphs of the Manual require, first to consider the existing incumbents for extension and renewal of their tenure and to take steps for fresh appointment in their place, if the
- B existing incumbents were not found suitable in comparison to more suitable persons available for appointment at the time of the renewal.

- C As already mentioned above, Section 24 of the Code does not speak about the extension or renewal of the term of the Public Prosecutor or Additional Public Prosecutor. But after the expiry of the term of the appointment of persons concerned, it requires the same statutory exercise, in which either new persons are appointed or those who have been working as Public Prosecutor or Additional Public Prosecutor, are again appointed by the State Government, for a fresh term. The procedure prescribed in the Manual - to the extent - it is not in conflict with the provisions of Section 24, shall be deemed to be supplementing the statutory
- D provisions. But merely because there is a provision for extension or renewal of the term, the same cannot be claimed as a matter of right.

- E It is true that none of the appellants can claim, as a matter of right, that their terms should have been extended or that they should be appointed against the existing vacancies, but, certainly, they can make a grievance that either they have not received the fair treatment by the appointing authority or that the procedure prescribed in the Code and in the Manual aforesaid, have not been followed. While exercising the power of judicial review even in respect of appointment of members of the legal profession as District Government Counsel, the Court can examine whether there was any infirmity in the "decision making process." Of course, while doing so, the Court cannot substitute its own judgment over the final
- F decision taken in respect of selection of persons for those posts. It was said in the case of *Chief Constable of the North Wales Police v. Evans*, (1982) 3 All E.R. 141:-

- G "The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches on a matter which it is authorised or enjoined by law to decide for itself a conclusion which is correct in the eyes of the court."

- H In the facts of the present case, the procedure prescribed by Section 24 of the Code have not been followed by the District Magistrate. There is nothing on the

records of the case to show that any panel, as required by sub-section (4) of Section 24, was prepared by the District Magistrate in consultation with the District & Sessions Judge. The District Magistrate simply made some general comment in respect of the appellants, when the District & Sessions Judge had put them in List 'A' of his recommendation. According to us, this shall not amount to either the compliance of sub-section (4) of Section 24 of the Code or Para 7.06(2) of the Manual. It appears there has been no effective or real consultation between the Sessions Judge and the District Magistrate for preparation of the panel, as contemplated by sub-section (4) of Section 24 of the Code.

The members of the legal profession are required to maintain high standard of legal ethics and dignity of profession. They are not supposed to solicit work or seek mandamus from courts in matters of professional engagements. We have been persuaded to interfere in these matters to a limited extent, as we are satisfied that there is patent infraction of the statutory provisions of the Code. As we are of the view that the District Magistrate has not performed his statutory duty as enjoined by law, the appeals of the appellants have to be allowed.

In the result, the appeals are allowed. We direct the District Magistrate, Moradabad, to perform his statutory duty afresh, in accordance with the requirement of Section 24 of the Code read with the relevant paragraphs of Chapter VII of the Manual, which are not inconsistent with Section 24 of the Code, so far the appellants are concerned, if the vacancies are still there. The necessary steps shall be taken preferably within four months from the date of this judgment. The State Government shall thereafter perform its part in accordance with Section 24 and different paragraphs of the Manual which are applicable in the facts and circumstances of the case. We make it clear that we are not expressing any opinion on the merit of the claim of the appellants to get extension or appointment against the posts of Assistant District Government Counsel (Criminal). There will be no order as to costs.

CIVIL APPEALS NOS. 386 & 387 OF 1993

So far the appellants of these appeals are concerned, their names were put under List 'B' by the District & Sessions Judge in his recommendation saying that they were "average lawyers". Their case stands on a different footing. The District & Sessions Judge, who is required to express his opinion on the merit and the conduct of the persons recommended for appointment or extension of the period

- A as District Government Counsel, has expressed the opinion that appellants are "average lawyers", and has put them in List "B". In other words, neither the District & Sessions Judge has recommended the case of the appellants of these appeals for extension nor the District Magistrate. Their case cannot be treated at par with the appellants of the other appeals. In such a situation, no useful purpose will be served by directing the District Magistrate to perform his statutory duty, as required by
- B sub-section (4) of Section 24 of the Code again, even in respect of these appellants. Accordingly, these appeals are dismissed. There will be no orders as to costs.

V.P.R.

C.A. Nos. 722 and 723/93 allowed.

C.A. Nos. 386 and 387/93 dismissed.