MUNDRIKA PRASAD SINHA

v.

STATE OF BIHAR

September 20, 1979

[V. R. KRISHNA IYER AND P. N. SHINGHAL, JJ]

Advocate—Appointed as Government Pleader to conduct all Government cases—Government, if has power to appoint Assistant Government Pleaders and withdraw cases from Government Pleader.

The petitioner, who was an Advocate, was authorised by the Government to represent it in all the civil cases in a district court. Considering the pendency of a large number of Government cases before courts and tribunals the Government appointed nine Assistant Government Pleaders during the term of office of the petitioner as Government Pleader and asked him to make over all the land acquisition cases to one of the Assistant Government Pleaders. The petitioner refused to comply with the Government's instructions and stated that he would himself conduct all the cases. The Government, however, stuck to its stand. His writ petition impugning the Government's decision was dismissed by the High Court.

Dismissing the petition under Art. 136.

HELD : 1. The definition of Government Pleader contained in s. 2(7) of the Code of Civil Procedure is an inclusive definition which, read along with O. 21, rr. 4 and 8(c) clearly yields the inference that Government may have as many Government Pleaders as it likes to conduct its cases. The section vests no sole control on one Government Pleader over others and the Government is perfectly free to put a particular Government Pleader in charge of particular cases. Government Pleaders and Assistant Government Pleaders who had been appointed according to administrative rules of the State are Government Pleaders within the meaning of the definition in s. 2(7) of the Code. Each one of them may depute other lawyers and exercise control over such surrogates. [763 G; 764 C]

2. The Bihar Rules regarding Government Pleaders, which are purely administrative prescriptions and which serve as guidelines and on which no legal right can be founded do not help the petitioner. The allocation of work or control *inter se* is an internal arrangement and there is no error in the behaviour of the Government. [764 F-G]

3. When there were several thousand cases in the courts in the State and hundreds of cases before Tribunals it was but right that Government did not sacrifice the speedy conduct of cases by not appointing a number of pleaders. It is inconceivable how the petitioner would have discharged his duties to the court and to the client of this crowd of land acquisition cases was posted in several courts more or less at the same time. [765 D-E]

Ramachandran v. *Alagiriswami*, A.I.R. 1961 Madras 450, approved.

[1. Despite the national litigation policy evolved by the All India Law Ministers' Conference in 1957 and the recommendation of the Law Commission there is still a proliferation of government cases in courts uninformed

by such policy. It is important that the State should be a model litigant with accent on settlement. Time has come for State Governments to have a second look, not only at the litigation policy but lawyers' fees rules especially in mass litigation involving *ad valorem* calculations in fixing fees in land acquisition cases. [762 B; 763 C]

2. The politicisation of Government Pleadership which is a public office is an issue of moment in a developing society controlled by the politics of skill and enjoying a legal monopoly. It is a healthy practice that the Government appoints these lawyers after consultation with the District Judge. Governments under our Constitution shall not play with law offices on political or other impertinent considerations as it may affect the legality of the action and subvert the rule of law itself [765 C]

CIVIL APPELLATE JURISDICTION : Special Leave Petition (Civil) No. 6056 of 1979.

From the Judgment and Order dated 12-7-1979 of the Patna High Court in C.W.J.C. No. 1618/79.

P. Govindan Nair and *S. K. Sinha* for the Petitioner.

L. N. Sinha, Attorney General, *U. P. Singh* and *R. B. Mahton* for the Respondent.

The Order of the Cour was delivered by

KRISHNA IYER, J. An unusual grievance of a Government Pleader, the petitioner, ventilated in a writ petition, was given short shrift by the High Court in a laconic order, but undaunted by this summary brevity the petitioner has pursued his case to this Court under Article 136. In utter nudity, his case is a claim of monopoly of all government cases in the Patna District, including lucrative land acquisition litigation, as part of the professional 'estate' of a Government Pleader. The prospective cash value of this heavy crop of cases is estimated by him to be around one lakh of rupees and this secret is perhaps at the back of this lawyer's litigation. Sri Govindan Nair, appearing for him, has, however, argued that his client's claim as the sole representative of Government in courts is not a legal cover for seeking lucre but for vindicating the inviolability of the high public office of Government Pleader by politicking men in the Secretariat or by practitioners of favouritism dressed in 'little brief authority', a deeper issue in which the Bar has a stake and the Bench must also be concerned. We wholly endorse the view that at some vital levels of justice, the Besh Bench may hang limp if the Bar does not represent. Justice to his office, not love of rupees, was urged as the respectable motivation for his persistent litigation, Maybe.

The fabric of facts, on which the grievance in law rests, may be appreciated first. The petitioner was admittedly the Government Pleader for the Patna District, 'authorised to represent' Government in all the civil cases. During the currency of his term a plurality of nine Assistant Government Pleaders was appointed and one of them was put in charge of a bunch of land acquisition cases. The petitioner was requested to make over those briefs to the new nominee. Thereupon, the petitioner challenged the power of Government, like any other litigant, to appoint any other lawyer except under him and never by excluding him. He went to the extent of writing to Government :

> "I am, therefore, unable to comply with your instruction in allowing any Assistant Government Pleader to work in this case. I shall myself conduct this case and I have enough time for it."

Government wrote back that in future he would not be given such cases. Chagrined by this loss of income and mayhem to his monopoly he rushed to the High Court for the universal panacea of a writ. The chemistry of Article 226 is governed by severe rules, and the High Court declined to dispense the magic remedy. So he has sought special leave from this Court but Article 136 has its own conditions and limitations. Sans substantial question of law of public importance which deserves to be decided by the Supreme Court or at least flaw in law which is fraught with manifest injustice, there is no other open sesame for this House of Justice. That password has not been uttered here, despite exercises in professional martyrdom the petitioner claims to have suffered, and so we close the door but by a speaking order since counsel's arguments have centred on the peril to the public office of Government Pleadership with potential menace to the administration of justice. Mystic muteness, however correct, may sometimes mislead when plain speech may finally silence.

What is the gravamen of this Government Pleader's legal grievance ? His economic grievence, however much he may hide it, is the prospective loss of fee from land acquisition cases which were spirited away. This 'commercial' aspect is an unhappy temptation against which the legal profession must take care. Having due regard to the rhetoric and reality surrounding the profession, is an avidity for briefs, because they yield a lakh of rupees by way of fees, a clean linen to be washed in court ? What, in essence, is the orientation of the bar ? 'Geared to the people or' a conspiracy against the laity ?' The politicisation of government pleadership which is a public office and the lucre-loving appetite for law offices, in the absence of a wholesome ceiling on lawyer's fees,

A are issues of moment in a developing society controlled by the politics of skill and enjoying a legal monopoly.

The State of Bihar, like many other States in the country, has an enormous volume of litigation. Government litigation policy is vital for any State if resources are to be husbanded to reduce rather than B increase its involvement in court proceedings. It is lamentable that despite a national litigation policy for the States having been evolved at an *all-India Law Ministers' Conference way back in* 1957(1) and *despite the recommendations of the Central Law Commission to promote settlement of disputes where Government is a party*(2), what we find in actual practice is a proliferation of government cases in courts C uninformed by any such policy. Indeed, in this country where government litigation constitutes a sizeable bulk of the total volume, it is important that the State should be a model litigant with accent on settlement. The Central Law Commission, recalling a Kerala decision, emphasised this aspect in 1973 and went to the extent of recommending a new provision to be read as Order 27 Rule 5B. The Commis- D sion observed :

> "27.9. We are of the view that there should be some provision emphasising the need for positive efforts at settlement, in suits to which the Government is a party.
>
> 27.10. With the above end in view, we recommend E the insertion of the following rule :—
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> 5-B(1) In every suit or proceeding to which the Government is a party or a public officer acting in his official capacity is a party, it shall be the duty of the Court in the first instance, in every case where it is possible to do so consistently with the nature of the circumstances of the case, F to make every endeavour to assist the parties in arriving at a settlement in respect of the subject-matter of the suit.
>
> (2) If, in any such suit or proceeding, at any stage it appears to the court that there is a reasonable possibility of a settlement between the parties, the court may adjourn G the proceeding for such period as it thinks fit, to enable attempts to be made to effect such a settlement.
>
> (3) The power conferred by sub-rule (2) is in addition to any other power of the court to adjourn the proceedings."

The relevance of these wider observations is that avoidable litiga- H tion holds out money by way of fees and more fees if they are contested

(1) 1972 K. L. T. 74 at p. 80
(2) See 54th Report of the Law Commission

cases and this lures a lawyer, like any other homo economicus, to calculate income on a speculative basis, as this Government Pleader has done in hoping for a lakh of rupees. A

We have been taken through the Bihar Government's rules for fees of Government Pleaders in subordinate courts. Rule 115 appetises and is unrelated to the quantum or quality of work involved nor the time spent. Ad valorem calculation in fixing fees for land acquisition cases has a tendency to promote unearned income for lawyers. The petitioner here has presumably fallen victim to this proclivity. The time has come for State Governments to have a second economic look not only at litigation policy but lawyer's fees rules (like rule 115 in the Bihar instance) especially in mass litigation involving *ad valorem* enormity and mechanical professionalism. Even a ceiling on income from public sector sources may be a healthy contribution to toning up the moral level of the professional system. After all, the cost of justice is the ultimate measure of the rule of law for a groaning people. Government and other public sector undertakings should not pamper and thereby inflate the system of costs. Maybe, this petition would not have been filed had the prospect of income without effort not been offered by Government Rules. B C D

A closer look at the legal stand may be helpful. The manifest injustice pleaded by the Government Pleader (the petitioner) is that the official income, expected from this heavy harvest of cases, of Rs. 1 lakh was being taken away by a brother practitioner. In support of this alleged injustice, he has pressed into service section 2(7) of the Code of Civil Procedure which runs thus : E

> "2(7). 'Government Pleader' includes any officer apponited by the State Government to perform all or any of the functions expressly imposed by this Code on the Government Pleader and also any pleader acting under the directions of the Government Pleader." F

Manifestly, this is an inclusive definition and, read along with Order 27 Rule (4) and (8)B(c), clearly yields the inference that Government may have as many Government Pleaders as it likes to conduct its cases even as any client, who has a crowd of cases to be conducted, my engage a battery of lawyers. Government is in no worse position that an ordinary litigant and is not bound to encourage monopoly within the profession. Indeed, the root cause of the petitioner's desire to corner all the litigation of the Government is that its policy of legal remuneration has no distributive bias nor socially sober ceiling. Some States have already adopted such a G H

A policy. Indeed, the State must evolve a policy in regard to its Law Officers which concedes to counsel freedom to recommend settlement of cases if they feel it just to do so and further practises distributive justice which preempts the need for adjournment because of absence of counsel and, lastly, sets a limit on the total fee payable for government work executed.

B

Section 2(7) of the Code of Civil Procedure being an inclusive definition allows any number of Government pleaders. It vests no sole control on one Government pleader over others and Government is perfectly free to put a particular Government pleader in charge of particular cases. Each one of them is a Government Pleader and may C depute other lawyers and exercise control over such surrogates. In this view, there is no error in the summary despatch deservedly given by the High Court to the writ petition whose main merit was daring novelty.

We must state that the learned Attorney General, appearing for D the State, was critical of a lawyer asking for or clinging to briefs and counsel for the petitioner (a former High Court Chief Justice) rightly slurred over the pecuniary part of the petition and veneered his submissions with the law of the high office of gevernment pleadership.

We fully appreciate the perspective presented by counsel. But be- E fore we come to that, let it be bluntly stated that if Government does an act offending the publice office filled by a Government pleader what becomes the incumbent in the land of Gandhi is a dignified renunciation of office, not a chase for the lost briefs through the 'writ' route. Moreover, the legal position is plain. As explained earlier, a bunch of Government pleaders is perfectly permissible consistently with Section F 2(7) and Order 27 rule (4) Civil Procedure Code. Nor do the Bihar rules regarding government pleaders help. They are purely administrative prescriptions and serve as guidelines and cannot found a legal right, apart from the fact that they do not contradict Government's power to appoint more than one Government Pleader. Allocation of work or control *inter se* is an internal arrangement and we see no error even G in that behaviour. Not to have provided more government counsel when the volume of litigation demanded it, would have clogged the dockets in Court and helped one pleader to corner all the briefs without reference to expeditious or efficient disposals.

Be that as it may, one of the major streams of litigation in which H government finds itself entangled flows from land acquisition. The States' developmental projects which necessarily must be large, involve acquisition of lands on a large scale. Bihar is no exception. Since com-

pensation claims come in considerable number before the Civil courts, several lawyers have to be engaged by the State for expeditious attention to its court litigation. The State, appreciating this need and with a view to help the court liquidate the docket explosion, appointed more than one government pleader for every District, depending on the case flow. Thus, Government Pleaders and Assistant Government Pleaders were appointed according to administrative rules of the State. Each one is a Government Pleader under Sec.2(7), Code of Civil Procedure.

It is heartening to notice that the Bihar Government appoints these lawyers after consultation with the District Judge. It is in the best interest of the State that it should engage competent lawyers without hunting for political partisans regardless of capability. Public offices—and Government Pleadership is one—shall not succumb to Tammany Hall or subtler spoils system, if purity in public office is a desideratum. After all, the State is expected to fight and win its cases and sheer patronage is misuse of power. One effective method of achieving this object is to act on the advice of the District Judge regarding the choice of Government pleaders. When there were several thousand cases in the Patna courts and hundreds of cases before a plurality of tribunals, it was but right that Government did not sacrifice the speedy conduct of cases by not appointing a number of pleaders on its behalf, for the sake of the lucrative practice of a single government Pleader. It is inconceivable how he would have discharged his duties to the court and to his client if this crowd of land acquisition cases were posted in several courts more or less at the same time. Adjournment to suit advocates' convenience becomes a bane when it is used only for augmentation of counsel's income, resisting democratisation and distributial jusitce within the profession. These principles make poor appeal to those who count, which is a pity.

Coming to the larger submission of counsel for the petitioner, we do recognise its importance in our era of infiltration of politicking even in forbidden areas. A Government pleader is more than an advocate for a litigant. He holds a public office. We recall with approval the observations a Division Bench of the Madras High Court made in *Ramachandran* v. *Alagiriswami*(1) and regard the view there, expressed about a Government Pleader's office, as broadly correct even in the Bihar set-up.

> "....the duties of the Government Pleader, Madras are duties of a public nature. Besides, as already explained the public are genuinely concerned with the manner in

(1) A. I. R. 1961 Madras 450

A which a Government Pleader discharges his duties because, if he handles his cases badly, they have ultimately to foot the bill. The Rajasthan case does not take into account all the aspects of the matter.

(36) The learned Advocate General argued that the B Government Pleader, Madras is only an agent of the Government, that his duties are only to the Government who are his principles and that he owes no duty to the public at all and that for that reason he would not be the holder of a Public Office.

(37) It is difficult to accept this view. The conten- C tion of the learned Advocate General may have been less untenable if the duties of the Government Pleader were merely to conduct in courts cases to which Government are a party. But, as the rules stand, he has a number of other duties to discharge. Besides, even if his only duty is the conduct of cases in which Government have been D impleaded, still as explained more than once before the public are interested in the manner in which he discharges his duties.

....

(90) I am clearly of opinion that having regard to the E fact that the Government Pleader of this court is employed by the State on remuneration paid from the public exchequer and having regard to the various functions and duties to be performed by him in the due exercise of that office, most of which are of an independent and responsible character, the office must be held to be a public office within F the scope of a *quo warranto* proceeding.

I consider that the most useful test to be applied to determine the question is that laid down by Erle, J. in (1851), 17 QB 149. The three criteria are, source of the office, the tenure and the duties. I have applied that test G and I am of opinion that the conclusion that the office is a public office is irresistible".

In this view, ordering about a Government Pleader is obnoxious but nothing savouring of such conduct is made out although we must enter a caveat that Governments under our Constitution shall not play with Law Offices on political or other impertinent considerations as H it may affect the legality of the action and subvert the rule of law itself. After all, a Government Pleader and, in a sense, every member of the legal profession, has a higher dedication to the people.

We dismiss the special leave petition but with a sad tag, which is the message of this martyrdom. Professions shall not be concealed conspiracies with 'effete, aristocratic, protective coloration', which at the same time enables one to make a considerable sum of money without sullying his hands with a "job" or "trade". The remarks of Tabachnik, in 'Professions for the People', about English professions of the eighteenth century smell fresh :

> "One could carry on commerce by sleight of hand while donning the vestments of professional altruism. To boot, one could also work without appearing to derive income directly from it. As Reader explains :
>
> The whole subject of payment.....seems to have caused professional men acute embarrassment, marking them take refuge in elaborate concealment, fiction, and artifice. The root of the matter appears to lie in the feeling that it was not fitting for one gentleman to pay another for services rendered, particularly if the money passed directly. Hence, the device of paying barrister's fee to the attorney, not to the barrister himself. Hence, also the convention that in many professional dealings the matter of the fee was never openly talked about, which could be very convenient, since it precluded the client or patient from arguing about whatever sum his advisor might eventually indicate as a fitting honorarium (1966 p. 37).
>
> The established professions—the law, medicine, and the clergy—held (or continued to hold) estate-like positions :—
>
> The three 'liberal professions' of the eighteenth century were the nucleus about which the professional class of the nineteenth century was to form. We have seen that they were united by the bond of classical education : that their broad and ill-defined functions covered much that later would crystallize out into new, specialised, occupations: that each, ultimately, derived much of its standing with the established order in the State.....(1966, p. 23)."

The time has come to examine the quality of the product or service, control the price, floor to ceiling, enforce commitment to the people who are the third world clients, and practise internal distributive justice oriented on basic social justice so that the profession may flourish without wholly hitching the calling to the star of material amassment immunised by law from the liabilities of other occupations. We do not suggest that lawyering in India needs a National

A Commission right now as in England and elsewhere, nor do we subscribe to the U.S. situation on which the President and the Chief Justice have pronounced. We quote —

> "We are over lawyered..... Lawyers of great influence and prestige led the fight against civil rights and economic justice..... They have fought innovations even in their own profession..... Lawyers as a profession have resisted both social change and economic reform."
>
> (President Carter, May, 1978)

B

> "We may well be on our way to a society overrun by hordes of lawyers, hungry as locusts, and brigades of justices in numbers, never before contemplated."
>
> (U.S. Chief Justice Burger)

C

Law Reform includes Lawyer Reform, an issue which the petitioner has unwittingly laid bare. After all, as Prof. Connel states—

D

> "Criticism of relatively conservative institutions in times of social questioning is hardly a new phenomenon."
>
> (Australian Law Journal, Vol. 51, p. 351)

E This long judicial journey vindicates the Short High Court order— Dismissed.

P.B.R. *Petition dismissed.*