REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1389 OF 2013
(@ out of SPECIAL LEAVE PETITION (CIVIL) NO. 23312/2009)

Smt. K. Vijaya Lakshmi ...
Appellant

Versus

Govt. of Andhra Pradesh
Represented by its Secretary
Home (Courts C1) Department
and another ...
Respondents

J U D G E M E N T

H.L. Gokhale J.

Leave Granted.

2. This appeal seeks to challenge the judgment and order dated 19.3.2009 rendered by a Division Bench of Andhra Pradesh High Court in Writ Petition No. 26147 of 2008. By that order the said writ petition of the appellant disputing

her non-appointment to the post of a Civil Judge in Andhra Pradesh, has come to be dismissed.

Facts leading to this appeal

3. The appellant herein is an advocate practicing in the courts at Markapur, District Prakasam in the State of Andhra Pradesh. The Andhra Pradesh High Court (Respondent No.2 herein) had invited applications for the appointments to 105 posts of (Junior) Civil Judges (including 84 posts by direct recruitment) by its Notification No.1/2007-RC dated 14.5.2007. A written examination was conducted for that purpose on 28.10.2007, and those who qualified therein, were called for an interview. After the interviews, some 81 candidates from amongst the direct recruits (and 17 by transfer) were selected by a committee of Hon'ble Judges of the High Court, and this selection was approved by the Full Court on the administrative side. The appellant was one of those who were selected, and her name figured at S.No.26 in the list of selected candidates from the general category.

4. However, it so transpired that whereas the other selected candidates were issued appointment letters, the

appellant was not. She, therefore, applied on 3.11.2008 under the provisions of The Right to Information Act, 2005, to find out the reason of her non-appointment. She received a letter dated 11.11.2008 from the respondent No.1 which gave the following reason therefor:

> *"I am directed to invite your attention to the reference 2nd cited, and to inform you that, adverse remarks were reported in the verification report, that your husband Sri Srinivasa Chowdary, who is practicing as an Advocate in the Courts at Markapur is having close links with CPI (Maoist) Party which is a prohibited organization."*

5. The appellant was shocked to learn the above reason for her non-appointment. Although nothing was stated against her in that letter, according to her what was stated against her husband was also false. She, therefore, filed a Writ Petition bearing No. 26147 of 2008 in the High Court of Judicature of Andhra Pradesh, and prayed that a writ of mandamus be issued to declare that the non-inclusion of her name in the list of Junior Civil Judges issued on 23.10.2008 was illegal, arbitrary and in violation of Article 14 of the Constitution of India (Constitution for short), and consequently

a direction be issued to the respondents to forthwith issue an order of appointment to her.

6. The respondents contested the matter by filing their affidavits in reply. This time the Respondent No 1 alleged that the appellant too had close links with the CPI (Maoist) party. Paragraphs 4 and 5 of the affidavit of respondent No. 1 stated as follows:-

> *"It is further submitted that the Superintendent of Police, has reported that in re-verification of character and antecedents of Karanam Vijaya Lakshmi D/o K. Balaguravaiah, Mangali Manyam, Markapur, Prakasam District who is selected as Junior Civil Judge shows that the confidential intrinsic intelligence collected recently with regard to the movements of CPI (Maoist), it came to light that Smt. K. Vijaya Lakshmi (Sl. No.26 in the selected list) D/o K. Balaguravaiah r/o Mangali Manyam, Markapur who is selected for the post of Junior Civil Judge and her husband Srinivasa Chowdary s/o Sambasiva Rao who is practicing as an advocate in the Courts at Markapur are having close links with CPI (Maoist) Party, which is a prohibited organization and also in touch with UG cadre of the CPI (Maoist) Party.*
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> *Further it is submitted that the CPI (Maoist) is a prohibited Organization by the Government and as the candidate Smt. K. Vijaya Lakshmi Sl. No.26 in the selected list D/o K. Balaguravaiah r/o Mangali Manyam, Markapur and her husband Srinivasa Chowdary S/o Sambasiva Rao who is practicing as an Advocate in the Courts at Markapur are having close links with CPI (Maoist) Party, which is a prohibited organization and also in touch with UG cadre of the CPI (Maoist) Party the Government feel that she should not be offered the appointment to the post of Junior Civil Judge."*

7. The appellant filed a rejoinder on 8.2.2009, and denied all the allegations as being false and incorrect.

8. A counter affidavit was filed on behalf of the Respondent No. 2, by the Registrar General of the High Court. In Para 4 of this affidavit it was stated that the appellant was provisionally selected by the High Court for the appointment to the post of a Civil Judge, along with other candidates. A provisional list of 98 selected candidates was sent to the first respondent Government of Andhra Pradesh to issue orders approving the select list, after duly following the formalities like verification of antecedents. The first respondent, vide its G.O.Ms. 164 Home (Cts. C1) Dept. dated 23.10.2008, did thereafter issue the order approving the Selection of 94 candidates. However, as far as the appellant is concerned, the affidavit stated that the first respondent vide its memo dated 8.5.2008, had requested the Superintendent of Police, Prakasam District, to get verified the character and antecedents of the appellant and other candidates. Thereafter, the affidavit stated:-

> *"...The 1st Respondent through the letter dated 25.10.2008 informed the High Court that the candidature of the petitioner could not be considered as it was reported in her antecedents verification report that she had links with prohibited organization.*
>
> *It is respectfully submitted that this Respondent has no role to play in the matter since the 1st Respondent is the appointing authority in respect of Civil Judge (Junior Division). Hence no relief can be claimed against this respondent."*

Thus, as can be seen, the High Court Administration was informed through a letter that the appellant had links with a prohibited organisation, but the affidavit does not state that the High Court was informed as to which was that organization, or as to how the appellant had links with that organization. The High Court has also not stated whether it made any inquiry with the Respondent No. 1 as to which was that organization, and in what manner the appellant was connected with it. Besides, as can be seen from the affidavit, the Government at its own level had taken the decision in this matter that the candidature of the appellant could not be considered due to the adverse report, and conveyed it to the High Court. This decision was accepted by the High Court, as

it is, by merely stating that it had no role to play since the Respondent No 1 was the appointing authority.

9. When the Writ Petition came up before a Division Bench of the High Court, the Division Bench by its order dated 18.9.2008 called upon the respondents to produce the material in support of the report which had been submitted by the Superintendent of Police, Prakasam District. The report and the supporting material was tendered to the Division Bench, and after going through the same the Bench held in para 19 of its judgment that 'the allegations appearing from the antecedent verification report show links/associations with the banned organization'. The Division Bench relied upon judgment of this court in **K. Ashok Reddy Vs. Govt. of India** reported in **1994 (2) SCC 303** to state that judicial review is not available in matters where the State was exercising the prerogative power, and applied it in the present case since the appointment of the candidate concerned was to be made to a sensitive post of a judge. The Division Bench also referred to and relied upon the judgment of this Court in **Union of India Vs. Kali Dass Batish** reported in **2006 (1)**

SCC 779 to the effect that when the appointing authority has not found it fit to appoint the concerned candidate to a judicial post, the court is not expected to interfere in that decision. The Division Bench therefore dismissed the writ petition by its impugned judgment and order.

10. Being aggrieved by this decision, the appellant has filed the present appeal. When the matter reached before this Court, the respondents were called upon to produce the report which was relied upon before the High Court. After a number of adjournments, the report was ultimately produced alongwith an affidavit of one M.V. Sudha Syamala, Special Officer (I/C). A document titled **'Report over the activities of CPI (Maoist) activists and their sympathizers'** dated 15.9.2008 by Inspector of Police, District Special Branch, Ongole was annexed with that affidavit. Para 5 of this report made certain adverse remarks against the appellant. This para 5 reads as follows:-

> *"5. Kasukurthi Vijayalakshmi, Advocate, Markapur CPI (Maoist) frontal organization member and sympathizer of CPI (Maoist):- She is wife of Srinivasarao @ Srinivasa Chowdary. She is a sympathizer of CPI (Maoist) party. She is a*

> *member of Chaitanya Mahila Samakhya (CMS), a frontal organization of CPI (Maoist). She along with other members Nagireddy Bhulakshmi @ Rana and Cherukuri Vasanthi, Ongole town is trying to intensify the activities of CMS in Prakasam district, especially in Markapuram area."*

One more affidavit was filed on behalf of the first respondent, viz, that of one Shri Kolli Raghuram Reddy who produced along therewith some of the documents of the police department, known as 'A.P. Police Vachakam'. He, however, accepted in para 5 of this affidavit that:-

> *"There is no particular documentary proof that the Chaitanya Mahila Samakhya is a frontal organization to the CPI (Maoist) except the above publication in A.P. Police Vachakam part III."*

11. The appellant filed a reply affidavit and denied the allegations. She stated that she was not a member of CPI (Maoist), nor did she have any connection with the banned organization or with any of its leaders. She disputed that any such organization, by name CMS existed, and in any case, she was not a member of any such organization. She submitted that her husband must have appeared in some bail applications of persons associated with this party, but she has never appeared in any such case. She further stated that her

husband was a member of a panel of advocates who had defended political prisoners, against whom the district police had foisted false cases, and those cases had ended in acquittals. She disputed the bona-fides of the police department in making the adverse report, and relied upon the resolutions passed by various bar associations expressing that her husband was being made to suffer for opposing the police in matters of political arrests. We may note at this stage that the Respondent No. 2 has not filed any counter in this appeal.

Submissions of the rival parties

12. Mr. Ranjit Kumar, learned senior counsel for the appellant submitted that the respondents have changed their stand from time to time. Initially, all that was stated was that the husband of the appellant was having close links with CPI (Maoist) party, which is a prohibited organization. Subsequently, it was alleged that the appellant was also having connection with the same party, and lastly it was said that she was a member of CMS, which was named to be a Maoist Frontal Organization. The learned Counsel called upon the respondents to produce any document to show that CMS

was in any way a Frontal Organization of CPI (Maoist), but no such material has been produced before us.

13. Reliance was placed by Mr. Ranjit Kumar, on the judgment of this Court in **State of Madhya Pradesh Vs. Ramashanker Raghuvanshi** reported in **AIR 1983 SC 374**. That was a case concerning the respondent who was a teacher. He was absorbed in a Govt. school on 28.2.1972 but his service was terminated on 5.11.1974, on the basis of an adverse report of Deputy Superintendent of Police. The High court of Madhya Pradesh quashed that termination order, for being in violation of Article 311 of the Constitution. This Court (per O. Chinappa Reddy, J.) while upholding the judgment of the High Court, elaborated the concepts of freedom of speech, expression and association enshrined in the constitution. It referred to some of the leading American judgments on this very issue. The Court noted that the political party 'Jansangh' or RSS, with which the respondent was supposed to be associated, was not a banned organization, nor was there any report that the respondent was involved in any violent activity. The Court observed that it is a different matter

altogether if a police report is sought on the question of the involvement of the candidate in any criminal or subversive activity, in order to find out his suitability for public employment. But otherwise, it observed in para 3:-

> *".....Politics is no crime'. Does it mean that only True Believers in the political faith of the party in power for the time being are entitled to public employment?..... Most students and most young men are exhorted by national leaders to take part in political activities and if they do get involved in some form of agitation or the other, is it to be to their ever-lasting discredit? Some times they get involved because they feel strongly and badly about injustice, because they are possessed of integrity and because they are fired by idealism. They get involved because they are pushed into the forefront by elderly leaders who lead and occasionally mislead them. Should all these young men be debarred from public employment? Is Government service such a heaven that only angels should seek entry into it?"*

This Court therefore in terms held that any such view to deny employment to an individual because of his political affinities would be offending Fundamental Rights under Articles 14 and 16 of the Constitution.

14. In paragraph 7 of its judgment the Court referred to the observations of Douglas, J. in **Lerner Vs. Casey** which are to the following effect:-

> ***"7.*** *In Lerner v. Casey, (1958) 357 US 468 Douglas, J. said:*
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> *"We deal here only with a matter of belief. We have no evidence in either case that the employee in question ever committed a crime, ever moved in treasonable opposition against this country. The only mark against them — if it can be called such — is a refusal to answer questions concerning Communist Party membership. This is said to give rise to doubts concerning the competence of the teacher in the Beilan case and doubts as to the trustworthiness and reliability of the subway conductor in the Lerner case....*
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> *There are areas where government may not probe . . . But government has no business penalizing a citizen merely for his beliefs or associations. It is government action that we have here. It is government action that the Fourteenth and First Amendments protect against . . . Many join associations, societies, and fraternities with less than full endorsement of all their aims."*

Thereafter, in para 9 this Court once again quoted Douglas, J's statement in **Speiser Vs. Randall (1958) 357 US 513** to the following effect**:-**

> *"9.....Advocacy which is in no way brigaded with action should always be protected by the First Amendment. That protection should extend even to the ideas we despise....."*

Ultimately this Court dismissed that petition. What it observed in paragraph 10 thereof, is equally relevant for our purpose. This para reads as follows:-

> *"10. We are not for a moment suggesting, that even after entry into Government service, a person may engage himself in political activities. All that we say is that he cannot be turned back at the very threshold on the ground of his past political activities. Once he becomes a Government servant, he becomes subject to the various rules regulating his conduct and his activities must naturally be subject to all rules made in conformity with the Constitution."*

15. Mr. Venkataramni, learned senior counsel appearing for the respondents, on the other hand, drew our attention to the judgment of a bench of three judges of this Court in **Union of India Vs. Kali Dass Batish** (supra), which was relied upon by the Division Bench. That was a case where the first respondent was a candidate for the post of a judicial member in the Central Administrative Tribunal. The selection committee, under the chairmanship of a judge of this Court, had selected him for consideration. When his antecedents were verified by the Intelligence Bureau, a noting was made by the Director (AT), Ministry of Personnel, on 25.10.2001, to the following effect:-

> *".....(i) In legal circles, he is considered to be an advocate of average caliber. (ii) It is learnt that though he was allotted to the Court of Justice R.L. Khurana, the learned Judge was not happy with his presentation of cases and asked the*

> *Advocate General to shift him to some other court, which was done. (iii) He was a contender for the Shimla AC seat on BJP ticket in 1982 and 1985. When he did not get the ticket, he worked against the party and was expelled from the party in 1985. He was subsequently re-inducted by the party in 1989.....”*

The Director, however, gave him the benefit of doubt, since his name had been recommended by a selection committee headed by a Judge of Supreme Court. The Joint Secretary, Ministry of Personnel also made a similar note. The Secretary, Ministry of Personnel, however, made a note that he need not be appointed, since his performance was poor. The Minister of State made a note that the departmental recommendations be sent to the Chief Justice of India (C.J.I.). When the proposal was subsequently submitted with the confidential memorandum to the C.J.I., he concurred with the memorandum submitted by the Secretary, Ministry of Personnel, and the name of the first respondent was dropped.

16. It is on this background that first respondent **Kali Dass Batish (supra)** approached the Himachal Pradesh High Court, which directed that his case be reconsidered afresh. When that judgment was challenged, this Court noted the

above referred facts, and held that when the appropriate decision-making procedure had been followed, and the C.J.I. had accepted the opinion of the Ministry to drop the candidature of the first respondent, there was no reason for the High Court to interfere with that decision. Provisions of the Administrative Tribunals Act, 1985 required a consultation with the C.J.I. under Section 6(3) thereof. That, having been done, and the first respondent having not been found suitable, there was no case for reconsideration. Mr. Venkataramni tried to emphasize that the involvement in political activities was the factor which went against the respondent no.1 in that case, and so it is for the appellant herein. However, as we can see from that judgment, the political connection was not the relevant factor which went against Kali Dass Batish. Principally, it is the fact that the he was reported to be a mediocre advocate which led to the rejection of his candidature.

17. It was also submitted on behalf of the respondents that the name of a candidate may appear in the merit list but he has no indefeasible right to an appointment. Reliance was

placed on the judgment of a Constitution Bench of this Court in **Shankarsan Dash Vs. Union of India** reported in **1991 (3) SCC 47**. We must however, note that while laying down the above proposition, this Court has also stated that this proposition does not mean that the State has the license for acting in an arbitrary manner. The relevant paragraph 7 of this judgment reads as follows:-

> *"7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the license of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative* merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted……."

Consideration of the rival submissions:

Duties of an advocate in the context of Article 22(1) of the Constitution, and the provisions of the Advocates Act, 1961:

18. We have noted the submissions of the rival parties on the issue of denial of appointment on the basis of a police report. The appellant has denied any association with CPI (Maoist) party or CMS. She has, however, stated that maybe her husband had appeared as an advocate for some persons associated with the CPI (Maoist) Party in their bail applications. Initially, as stated in the first respondent's letter dated 11.11.2008, the basis of the adverse police report against the appellant was that her husband is having close links with the CPI (Maoist) party, which is a prohibited organization. Mr. Ranjit Kumar submitted that the appellant can't be made to suffer because of her husband appearing for some litigant, and secondly he asked: 'in any case can her husband be criticized for appearing to seek any bail order for a person on the ground that, the person belongs to CPI (Maoist) party?' As an advocate, he was only discharging his duties for the litigants who had sought his assistance.

19. We quite see the merit of this submission. Those who are participating in politics, and are opposed to those in power, have often to suffer the wrath of the rulers. It may occasionally result in unjustifiable arrests or detentions. The merit of a democracy lies in recognizing the right of every arrested or detained person to be defended by a legal practicenor of his choice. Article 22(1) of our Constitution specifically lays down the following as a Fundamental Right:-

> *"22.* ***Protection against arrest and detention in certain cases-*** *(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest* ***nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice****."*
>
> (emphasis supplied)

All such accused do have the right to be defended lawfully until they are proved guilty, and the advocates have the corresponding duty to represent them, in accordance with law. Taking any contrary view in the facts of the present case will result into making the appellant suffer for the role of her husband who is discharging his duty as an advocate in furtherance of this Fundamental Right of the arrested persons.

We cannot ignore that during the freedom struggle, and even after independence, many leading lawyers have put in significant legal service for the political and civil right activists, arrested or detained. In the post independence era we may refer, in this behalf, to the valuable contribution of Late Sarvashri M.K. Nambiar, (Justice) V.M. Tarkunde, and K.G. Kannabiran (from Andhra Pradesh itself) to name only a few of the eminent lawyers, who discharged this duty by representing such arrested or detained persons even when they belonged to banned organizations.

20. We may, at this stage, note that the Bar Council of India, which is a regulating body of the advocates, has framed rules under Section 49 of the Advocates Act, 1961. Chapter-II of Part-VI thereof, lays down the Standards of Professional Conduct and Etiquette. Section-I, consisting of rules 1 to 10 thereof, lays down the duties of the advocates to the court, whereas Section-II lays down the duties to the client. Rules 11 and 15 of this Section are relevant for us. These two rules read as follows:-

> *"11. An advocate is bound to accept any brief in the Courts or Tribunals or before any other authorities in or before which he proposes to practice at a fee consistent with his standing at the Bar and the nature of the case. Special circumstances may justify his refusal to accept a particular brief.*
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> *.....*
>
> *15. It shall be the duty of an advocate fearlessly to uphold the interests of his clients by all fair and honourable means without regard to any unpleasant consequences to himself or any other. He shall defend a person accused of a crime regardless of his personal opinion as to the guilt of the accused, bearing in mind that his loyalty is to the law which requires that no man should be convicted without adequate evidence."*

In **A.S. Mohammed Rafi Vs. State of Tamil Nadu** reported in **2011 (1) SCC 688**, this Court was concerned with the resolution passed by a Bar Association not to defend accused policemen in criminal cases. This Court in terms held that such resolutions violate the right of an accused to be defended, which right is specifically recognised under Article 22(1) of the Constitution as a Fundamental Right, and such resolutions are null and void.

Requirements for the appointment of a judicial officer, under Article 234 of Constitution and Judicial Service Rules:

21. In this appeal, we are concerned with the question as to whether the first respondent (the Govt. of Andhra Pradesh) and the second respondent (the High Court) have proceeded correctly in the matter of appointment of the appellant. In this behalf we must refer to Article 234 of the Constitution, which is the governing article when it comes to the recruitment of persons other than District Judges to the judicial service. This article reads as follows:-

> *"**234. Recruitment of persons other than district judges to the judicial service –** Appointment of persons other than district judges to the judicial service of a State shall be made by the Governor of the State in accordance with rules made by him in that behalf after consultation with the State Public Service Commission and with the High Court exercising jurisdiction in relation to such State."*

22. In the instant case, appointments to the posts of Civil Judges are governed by the Andhra Pradesh State Judicial Service Rules, 2007 framed under Articles 233, 234, 235, 237 proviso to Article 309 and proviso to Article 320(3) of the Constitution. Rule 4 (1) of these rules declares that the Governor of the State shall be the Appointing Authority for the categories of District Judges and Civil Judges. Rule 4 (2) (d)

lays down that the appointments to the category of civil Judges shall be by direct recruitment from among the eligible advocates on the basis of written and viva-voce test, as prescribed by the High Court. Accordingly, in the present case an advertisement was issued, and written and oral tests were conducted. The appellant appeared for the same and was declared successful in both the tests. Thereafter her name figured in the select list. It was at this stage that the investigation was carried out by the Intelligence Bureau, which gave an adverse report about her. We do not find from the affidavit of the Registrar General, filed during the hearing of the Writ Petition, that all relevant papers of the police investigation were submitted to the High Court on the administrative side. Now, the question arises viz. as to whether it was proper for the respondent No. 1 to decide on its own that the candidature of the appellant could not be considered on the bias of that report? The police report dated 15.9.2008 was produced before the Division Bench only when the respondent No. 1 was called upon to produce the material relied upon against the appellant. And if the report was

adverse, was it not expected of the respondent no.1 to forward all those relevant papers to the High Court on administrative side for its consideration? This is what was done in the case of **Kali Dass Batish (supra)** wherein an adverse report was received after the inclusion of the name of the respondent no.1 in the select list, and the report was forwarded to the C.J.I. In the present case it has not been placed on record that all such papers were forwarded to the High Court on the administrative side to facilitate its decision. On the other hand the Government itself had taken the decision that appellant's candidature could not be considered in view of the adverse reports. It can not therefore be said that there has been a meaningful consultation with the High Court before arriving at the decision not to appoint the appellant. Article 234 specifically requires that these appointments are to be made after consultation with the State Public Service Commission and the High Court exercising jurisdiction in the concerned state. The High Court may accept the adverse report or it may not. Ultimately, inasmuch as the selection is for the appointment to a judicial post, the

Governor will have to be guided by the opinion of the High Court. In the present case as is seen from the affidavit of the Registrar-General in reply to the Writ Petition, in view of the letter from the Home Department, the High Court has thrown up its hands, and has not sought any more information from the first respondent. It is the duty of the Government under Article 234 to forward such reports to the High court, and then it is for the High Court to form its opinion which will lead to the consequential decision either to appoint or not to appoint the candidate concerned. Such procedure is necessary to have a meaningful consultation as contemplated under this Article. Any other approach will mean that whatever is stated by the police will be final, without the same being considered by the High Court on the administrative side.

23. In **Shamsher Singh Vs. State of Punjab** reported in **AIR 1974 SC 2192**, a Constitution bench of this Court was concerned with a matter where the Punjab and Haryana High Court had handed over the work of conducting an enquiry against a judicial officer to the Vigilance Department of the

Punjab Government. This Court called it as an act of 'self-abnegation'. Para 78 of this judgment reads as follows:-

> *"78. The High Court for reasons which are not stated requested the Government to depute the Director of Vigilance to hold an enquiry. It is indeed strange that the High Court which had control over the subordinate judiciary asked the Government to hold an enquiry through the Vigilance Department. The members of the subordinate judiciary are not only under the control of the High Court but are also under the care and custody of the High Court. The High Court failed to discharge the duty of preserving its control. The request by the High Court to have the enquiry through the Director of Vigilance was an act of self abnegation. The contention of the State that the High Court wanted the Government to be satisfied makes matters worse The Governor will act on the recommendation of the High Court. That is the broad basis of Article 235. The High Court should have conducted the enquiry preferably through District Judges. The members of the subordinate judiciary look up to the High Court not only for discipline but also for dignity. The High Court acted in total disregard of Articles 235 by asking the Government to enquire through the Director of Vigilance."*

24. In **State of Bihar Vs. Bal Mukund Sah** reported in **AIR 2000 SC 1296**, a Constitution bench of this Court was concerned with the issue as to whether it was permissible to lay down the recruitment procedure for the district and subordinate judiciary by framing rules under Article 309 without having a consultation with the High Court, in the teeth

of Articles 233 to 235. This Court examined the scheme of the relevant articles of the Constitution and the rules framed by Government of Bihar, in this behalf. Paragraph 20 of this judgment is relevant for our purpose, and it reads as follows:-

> *"20. Part VI of the Constitution dealing with the States, separately deals with the executive in Chapter II, the State Legislature under Chapter III and thereafter Chapter IV dealing with the Legislative Powers of the Governor and then follows Chapter V dealing with the High Courts in the States and Chapter VI dealing with the Subordinate Courts. It is in Chapter VI dealing with the Subordinate Courts that we find the provision made for appointment of District Judges under Article 233, recruitment of persons other than the District Judges to the Judicial Services under Article 234 and also Control of the High Court over the Subordinate Courts as laid down by Article 235. Article 236 deals with the topic of 'Interpretation' and amongst others, defines by sub-article (b) the expression "judicial service" to mean "a service consisting exclusively of persons intended to fill the post of District Judge and other civil judicial posts inferior to the post of District Judge." It becomes, therefore, obvious that, the framers of the Constitution separately dealt with 'Judicial Services' of the State and made exclusive provisions regarding recruitment to the posts of District Judges and other civil judicial posts inferior to the posts of the District Judge. Thus these provisions found entirely in a different part of the Constitution stand on their own and quite independent of Part XIV dealing with Services in general under the 'State'. Therefore, Article 309, which, on its express terms, is made subject to other provisions of the Constitution, does get circumscribed to the extent to which from its general field of operation is carved out a separate and exclusive field for operation by the relevant provisions of Articles dealing with Subordinate*

Judiciary as found in Chapter VI of Part VI of the Constitution to which we will make further reference at an appropriate stage in the later part of this judgment."

25. These judgments clearly lay down the principles which guide the interpretation and role of Articles 233 to 235 of the Constitution to safeguard the independence of the subordinate judiciary. Article 234 requires a meaningful consultation with the High Court in the matter of recruitment to judicial service. In view of the mandate of Article 234, High Court has to take a decision on the suitability of a candidate on the administrative side, and it cannot simply go by the police reports, though such reports will, of course, form a relevant part of its consideration. As held in paragraph 3 of **Ramashankar Raghuvanshi (supra)** to deny a public employment to a candidate solely on the basis of the police report regarding the political affinity of the candidate would be offending the Fundamental Rights under Article 14 and 16 of the Constitution, unless such affinities are considered likely to effect the integrity and efficiency of the candidate, or (we may add) unless there is clear material indicating the involvement of the candidate in the subversive or violent

activities of a banned organization. In the present case there is no material on record to show that the appellant has engaged in any subversive or violent activities. The appellant has denied her alleged association with CPI (Maoist) party or CMS. Respondent No. 1 has accepted that there is no documentary proof that CMS is a frontal organization of CPI (Maoist). And as far as her connection CPI (Maoist) is concerned, there is no material except the report of police, the bonafides of which are very much disputed by the appellant. Besides, since the report was neither submitted to nor sought by the High Court, there has not been any consideration thereof by the High Court Administration. Thus, there has not been any meaningful consultation with the High Court on the material that was available with the Government. The High Court administration has thus failed in discharging its responsibility under Article 234 of the Constitution.

26. The Division Bench has relied upon the observations of this Court in **K. Ashok Reddy** (supra) to bring in the principle of prerogative power to rule out judicial review. In that matter the petitioner had sought a declaration

concerning the judges of the High Courts that they are not liable to be transferred. One of his submissions was that there is absence of judicial review in the matter of such transfers, and the same is bad in law. As noted in the impugned judgment, in **K. Ashok Reddy** (supra), this Court did refer to the observations of Lord Roskill in **Council of Civil Service Union v. Minister for the Civil Service** reported in **1984 (3) All ER 935** that many situations of exercise of prerogative power are not susceptible to judicial review, because of the very nature of the subject matter such as making of treaties, defence of realm, and dissolution of Parliament to mention a few. Having stated that, as far as the transfer of judges is concerned, this court in terms held that there was no complete exclusion of judicial review, instead only the area of justiciability was reduced by the judgment in **Supreme Court A.O.R Association Vs. Union of India** reported in **(1993) 4 SCC 441.** The reliance on the observations from **K. Ashok Reddy** (supra) was therefore totally misplaced. Besides, the appointment to the post of a Civil Judge is covered under Article 234 and the State Judicial

Service Rules, and if there is any breach or departure therefrom, a judicial review of such a decision can certainly lie. The High Court, therefore, clearly erred in holding that judicial review of the decision concerning the appointment of a Civil Judge was not permissible since that post was a sensitive one.

Hence, the conclusion:

27. Here we are concerned with a question as to whether the appellant could be turned back at the very threshold, on the ground of her alleged political activities. She has denied that she is in any way connected with CPI (Maoist) or CMS. There is no material on record to show that this CMS is a banned organization or that the appellant is its member. It is also not placed on record in which manner she had participated in any of their activities, and through which programme she tried to intensify the activities of CMS in Markapuram area, as claimed in paragraph 5 of the report quoted above. While accepting that her husband may have appeared for some of the activists of CPI (Maoist) to seek bail, the appellant has alleged that the police are trying to frame

her due to her husband appearing to oppose the police in criminal matters. Prima facie, on the basis of the material on record, it is difficult to infer that the appellant had links/associations with a banned organization. The finding of the Division Bench in that behalf rendered in para 19 of the impugned judgment can not therefore be sustained.

28. We may as well note at this stage, that on selection, the Civil Judges remain on probation for a period of two years, and the District Judges and the High Court have ample opportunity to watch their performance. Their probation can be extended if necessary, and if found unsuitable or in engaging in activities not behoving the office, the candidates can be discharged. The relevant rules of the Andhra Pradesh State Judicial Service being Rule Nos. 9, 10 and 11 read as follows:-

> *"9.* ***Probation and officiation:***
>
> *a) Every person who is appointed to the category of District Judges by direct recruitment from the date on which he joins duty shall be on probation for a period of two years.*
>
> *b) Every person who is appointed to the category of District Judges otherwise than on direct recruitment shall be on officiation for a period of two years.*

c) *Every person who is appointed to the category of Civil Judges shall be on probation for a period of two years.*

d) *The period of probation or officiation, may be extended by the High Court by such period, not exceeding the period of probation or officiation, as the case may be, as specified in clauses (a) to (c) herein above.*

10. ***Confirmation/Regularisation:*** *A person who has been declared to have satisfactorily completed his period of probation or officiation as the case may be shall be confirmed as a full member of the service in the category of post to which he had been appointed or promoted, as against the substantive vacancy which may exist or arise.*

11. ***Discharge of unsuitable probationers:*** *If at the end of the period of probation or the period of extended probation, the Appointing authority on the recommendation of the High Court, considers that the probationer is not suitable to the post to which he has been appointed, may by order discharge him from service after giving him one month's notice or one month's pay in lieu thereof."*

29. In view of this constitutional and legal framework, we are clearly of the view that the High Court has erred firstly on the administrative side in discharging its responsibility under Article 234 of the Constitution, and then on the Judicial side in dismissing the writ petition filed by the appellant, by drawing an erroneous conclusion from the judgment in the case of **Kali Dass Batish (supra)**. Having stated so, the

Court can not grant the mandamus sought by the appellant to issue an appointment order in her favour. As held by this Court in para 17 of **Harpal Singh Chauhan Vs. State of U.P.** reported in **1993 (3) SCC 552**, the court can examine whether there was any infirmity in the decision making process. The final decision with respect to the selection is however to be left with the appropriate authority. In the present matter the Division Bench ought to have directed the State Govt. to place all the police papers before the High Court on the administrative side, to enable it to take appropriate decision, after due consideration thereof.

30. Accordingly, the impugned judgment and order dated 19.3.2009 rendered by the Division Bench of the Andhra Pradesh High Court is hereby set-aside. The first respondent State Government is directed to place the police report (produced before the Division Bench) for the consideration of the High Court on the administrative side. The first respondent should do so within two weeks from the receipt of a copy of this judgment. The selection committee of the High Court shall, within four weeks thereafter consider all

relevant material including this police report, and the explanation given by the appellant, and take the appropriate decision with respect to the appointment of the appellant, and forward the same to the respondent no 1. The first respondent shall issue the consequent order within two weeks from the receipt of the communication from the High Court. This appeal and the Writ Petition No. 26147 of 2008 filed by the appellant in the High Court will stand disposed off with this order. In the facts of this case, we refrain from passing any order as to the cost.

.....
..J.
[**A.K. Patnaik**]

.....
.J.
[**H.L. Gokhale**]

New Delhi
Dated : February 18th, 2013