

ITEM NO.8

COURT NO.1

SECTION III-A

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(S). 1867/2006

MALIK MAZHAR SULTAN &amp; ANR.

APPELLANT(S)

VERSUS

U.P. PUBLIC SERVICE COMMISSION  
THROUGH ITS SECRETARY & ORS.

RESPONDENT(S)

(REGARDING STATES OF WEST BENGAL AND DELHI)

[IA 152/2016-APPLN. FOR DIRECTIONS,

IA 153/2017-APPLN. FOR PERMISSION FOR VARIATION IN TIME ,

IA 77756/2017- APPLN. FOR INTERVENTION

IA 117790/2017-APPLN. FOR APPROPRIATE ORDERS/DIRECTION,

IA 70324/2018-EXTENSION OF TIME

IA 70330/2018-EXTENSION OF TIME]

WITH

SMW(C) NO. 1/2017 (PIL-W)

SMW(C) NO. 2/2018 (PIL-W)

Date : 29-11-2018 These matters were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MR. JUSTICE K.M. JOSEPH

*AMICUS CURIAE*

State Of  
W.B., Delhi

Mr. Shyam Divan, Sr. Adv.

Mr. Udayaditya Banerjee, Adv.

SMW© 1/17

Mr. Arvind P. Datar, Sr. Adv.(AC)[N/P]

Ms. Remya Raj, Adv.

**For Parties :**  
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Ms. Maitrayee Banerjee, Adv.  
Mr. Saurav Gupta, Adv.

**State of W.B.** Mr. Suhaan Mukerji, Adv.  
Ms. Astha Sharma, Adv.  
Mr. Amit Verma, Adv.  
Mr. Abhishek Manchanda, Adv.  
Ms. Kajal Dalal, Adv.  
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**Delhi High Court** Mr. Raju Ramachandran, Sr. Adv.  
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Ms. Hamsini Shankar, Adv.  
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Mr. M.V. Mukunda, Adv.

**Delhi HC** Mr. P.S. Narasimha, Sr. Adv.  
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**Gauhati High Court** Mr. Vijay Hansaria, Sr. Adv.  
Ms. Sneha Kalita, AOR

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| <b>M.P. High Court</b>                        | <b>Mr. Arjun Garg, AOR</b>              |
|   | <b>Mr. Ankur Yadav, AOR</b>             |
|   | <b>Mr. S.R. Singh, Sr. Adv.</b>         |
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| <b>Patna High Court</b>                       | <b>For M/s. Parekh &amp; Co.</b>        |
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|   | <b>Mr. Hitesh Kumar Sharma, Adv.</b>    |
|   | <b>Mr. S.K. Rajora, Adv.</b>            |
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| <b>Meghalya High Court</b>                    | <b>Mr. Sanjai Kumar Pathak, AOR</b>     |
| <b>Jharkhand High Court</b>                   | <b>Mr. Krishnanand Pandey, AOR</b>      |
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**State of Mizoram**

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**Mr. Shail Kumar Dwivedi, AOR**

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Mr. Radha Shyam Jena, AOR

Mr. R. Sathish, AOR

Mr. R. Nedumaran, AOR

Mr. Prakash Kumar Singh, AOR

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Mr. Pradeep Misra, AOR

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Mr. Naresh Kumar, AOR

Mr. Naresh K. Sharma, AOR

Ms. Naresh Bakshi, AOR

Mr. Milind Kumar, AOR

Mr. Merusagar Samantaray, AOR

Mr. M.R. Shamshad, AOR

Mr. Krishnayan Sen, AOR

Mr. Mukesh Kumar Maroria, AOR

Mr. Shree Pal Singh, AOR

Mr. Gopal Singh, AOR

Mr. Vinod Sharma, AOR

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HC of M.P.

Mr. Mishra Saurabh, AOR

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Mr. Som Raj Choudhury, AOR

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Telangana HC

Mr. Shail Kumar Dwivedi, AOR

Mr. Kaushal Yadav, AOR

Mr. Ashwani Kumar, AOR

Mr. Ardhendumauli Kumar Prasad, AOR

Mr. Sibho Sankar Mishra, AOR

Mr. Pradeep Kumar Yadav, Adv.

Ms. Manju Jetley, AOR

UPON hearing the counsel the Court made the following  
O R D E R

**STATE OF WEST BENGAL/HIGH COURT OF CALCUTTA**

Following officers are present on behalf of the State of West Bengal and the High Court of Calcutta:

A. **On behalf of Calcutta High Court**

(i) Mr. Ananda Kumar Mukherjee, Registrar General, Calcutta High Court

B. **On behalf of State of West Bengal**

(i) Mr. Rajdeep Dutta, Liasion Officer.

We have perused the affidavit filed by the Chief Secretary, Government of West Bengal and also the affidavit filed by the Additional Chief Secretary, Finance Department, Government of West Bengal pursuant to the order of this Court dated 15<sup>th</sup> November, 2018.

In response to the picture presented by the Registrar General of the High Court of Calcutta in an

enclosure marked as Annexure 'A' to his affidavit dated 12<sup>th</sup> November, 2018 filed in this Court on 13<sup>th</sup> November, 2018 the Chief Secretary and the Additional Chief Secretary, Finance Department of the Government of West Bengal in their separate affidavits have in one voice stated that for projects involving financial implications of less than Rs.10 crore the sanctioning authority is the Secretary of the Judicial Department of the State of West Bengal whereas for projects involving financial implications of more than Rs.10 crore approval of the Government of West Bengal is required. In the said affidavits, there is a reference to a meeting held on 20<sup>th</sup> November, 2018 where some kind of consensus seems to have been emerged that there is no shortage of funds.

In the affidavit of the Chief Secretary there is also a reference to a letter dated 22<sup>nd</sup> November, 2018 of the Government of West Bengal to the Registrar General of the High Court of Calcutta asking for details or proposals submitted by the High Court to the Government of West Bengal.

We are shocked and surprised at the stand taken by the two high officials of the State of West Bengal in their

respective affidavits. The order of this Court dated 15<sup>th</sup> November, 2018 which has also been extracted in the said affidavits specifically require the two authorities to inform the Court as to the date when the projects under construction (75 court halls and 39 residential units) would be completed and when construction of 422 court halls and 630 residential units will commence. There is not even any attempt to answer the said query.

The Registrar General of the High Court of Calcutta who is personally present in Court through the learned Amicus Curiae Shri Shyam Divan has placed before the Court a letter dated 27<sup>th</sup> November, 2018 addressed by him in response to the letter of the Government of West Bengal dated 22<sup>nd</sup> November, 2018. The said letter dated 27<sup>th</sup> November, 2018 of the Registrar General of the High Court contains a list of various projects which have been forwarded to the State Government seeking approval including the financial approval and the stage of the said projects.

A glance at the contents of the said letter and its enclosures/annexures would go to show that the financial approval to some of the projects are pending since the year 2015-2016.

The above facts belie what has been stated by the Chief Secretary and the Additional Chief Secretary, Finance Department in their respective affidavits including what is stated to be the outcome of the meeting held on 20<sup>th</sup> November, 2018 in the presence of the high officials of the State.

In the above circumstances, we are left with no option but to conclude that the appropriate order that should be passed at this stage is to require the Chief Secretary of the State to inform the Court by means of an affidavit the precise date/dates on which the projects under construction (both court halls and residential units) will be completed and also the projects which are yet to commence (i.e. 422 court halls and 630 residential units) will commence and will be completed. In placing the aforesaid information before the Court the Chief Secretary of the State of West Bengal will, naturally, have to be mindful of the availability of the finance not only for the present financial year but also for the financial years to come and the possibility of the quantum of allocation that may be made in the budgetary provisions that will be tabled in the Assembly in the coming years.

Needless to say, the Chief Secretary is expected to indicate the time schedule with precision and while indicating the said time schedule to ensure that the time taken for completion of the various projects (under construction and yet to be taken up for construction) will be a reasonable so as to answer the crying needs of the judicial wing of the State of West Bengal. The said affidavit will be filed on or before 4<sup>th</sup> of December, 2018.

The matter will be taken up on 5<sup>th</sup> December, 2018 along with the next group of cases.

The Chief Secretary and the Additional Chief Secretary, Finance Department along with the Registrar General of the High Court shall remain personally present in Court on the next date fixed i.e. 5<sup>th</sup> December, 2018.

**DELHI/HIGH COURT OF DELHI**

Following officers are present on behalf of the Government of NCT of Delhi and the High Court of Delhi:

**A. On behalf of Delhi High Court**

(i) Mr. D.K. Sharma, Registrar General, High Court

**B. On behalf of Government of NCT of Delhi**

(i) Mr. AK Mendiratta, Principal Secretary, Law, NCTD

(ii) Mr. Sanjeev Khirwar, Secretary, PWD

- (iii) Mr. Lovleen, Addl. Secretary (Law, Justice and Legislative Affairs)
- (iv) Mr. Umesh Mishra, Chief Engineer, PWD, Delhi
- (v) Mr. Sanjeev Rastogi, Chief Project Manager (Other Projects), PWD
- (vi) Mr. Vivek Gupta, Executive Engineer (Other Projects Electrical Division), PWD

We have perused the affidavit filed by the Registrar General of the High Court of Delhi wherein it is stated that advertisement for filling up 50 posts of Civil Judge Junior Division dated 14<sup>th</sup> November, 2018 has been modified and the number of posts has been increased to 147. It is stated by the Registrar General of the High Court of Delhi that he expects the process of appointment to be completed within a period of six and half months from the date of advertisement which would be sometime in June/July 2019. Thereafter, we are told, the selected officers will undergo mandatory training for one year and will be ready to commence court work sometime in June/July 2020. To accommodate these officers and to make the court functional an additional number of 167 court halls are required, details of which are mentioned in the earlier order of this Court dated 15<sup>th</sup> November, 2018, namely, 47 in Karkardooma

Court Complex; 16 in Saket Court Complex; 64 in Dwarka Court Complex and 40 in Rohini Court Complex.

By previous order of this Court dated 15<sup>th</sup> November, 2018 we had indicated that the time frame which was tentatively indicated by the Government of NCT of Delhi for construction of the additional court premises i.e. October, 2021/December, 2021 is not acceptable. An affidavit was required to be filed on behalf of the Government of NCT of Delhi indicating the availability of infrastructure. The said affidavit has been filed today by the Chief Secretary of the Government of NCT of Delhi a copy of which has been made available to the Bench in the course of the hearing.

We have glanced through the said affidavit of the Chief Secretary. Broadly, what is indicated therein is an alternative proposal of constructing 195 court halls in three different locations located in the trans-yamuna areas. The tentative cost is estimated at about Rs.332 crore on account of new construction instead of what was proposed earlier on behalf of the Government of NCT of Delhi i.e. modification/addition to the existing court complexes which would involve more costs/more financial resources.

We do not know what would be the stand of the High Court of Delhi with regard to the feasibility of the latest proposal suggested by the Government of NCT of Delhi, as indicated above, namely, whether allocation of the court in the new locations would be administratively feasible and possible.

The High Court of Delhi may examine the said proposal contained in the affidavit of the Chief Secretary submitted/filed in Court today. What appears to us from the interactions in Court is that the possibility of the Government of NCT of Delhi completing the constructions of new court halls wherever the same may be located by June/July 2020 (when the additional courts are expected to start functioning) is remote. Not to talk about commencement of construction and preparation of blue-print even the project is at the stage of mere conception and ideas are yet to fully develop.

In such circumstances, we would like to impress upon the Government of NCT of Delhi, at this stage, that it would be constitutional duty and responsibility to ensure that 167 additional court rooms are available, if required,

by taking suitable premises on rent or lease so as to ensure that the additional courts start functioning when the officers to be recruited are available after completing training i.e. by June/July 2020.

The Government of NCT of Delhi and the High Court will submit their respective response to the above effect on or before 12<sup>th</sup> December, 2018 and the matter will be taken up again on 13<sup>th</sup> December, 2018 so far as the issue of infrastructure in Delhi is concerned.

In the order of this Court dated 15<sup>th</sup> November, 2018 in respect of Delhi/High Court of Delhi, the words "50 posts of Delhi Higher Judicial Service will be finalized on 30<sup>th</sup> January, 2019" shall be read as "50 posts of Delhi Judicial Service will be finalized on 30<sup>th</sup> January, 2019".

[VINOD LAKHINA]  
AR-cum-PS

[ANAND PRAKASH]  
BRANCH OFFICER