

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

CIVIL APPEAL NO(s). 40 7 2- 40 7 3 OF 20 0 4

STA T E O F RA J A S T H A N & ORS.

Appellant (s)

V E R S U S

TE E J A D E V I S W A M I & ORS.

Respondent(s)

(With prayer for interim relief and office report)

Date: 31/ 0 7 / 2 0 0 7 These Appeals were called on for hearing today.

CORAM :

HON' B L E MR. JUS T I C E A.K. MATHU R
HON' B L E MR. JUS T I C E MAR K A N D E Y KA T J U

For Appellant(s)

Mr. Aruneshw a r Gupta, AAG.
Mr. Naveen Ku m a r Singh, Adv.
Mr. Mukul Sood, Adv.
Mr. Shashw at Gupta, Adv.

For Respondent(s)

Mr. Sushil Kr. J ai n, Adv.
For Bar Association Mr. Puneet J ai n, Adv.
Mrs. Christi J ain, Adv.
Mr. H.D. Thanvi, Adv.
Mr. Sar ad Singhani a, Adv.

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

The appeals are allowed with no order as to costs in terms of the
signed order.

(Ajay Kr. J ain)

(Vijay Dhawan

Court Master

Court Maste

(Signed order is placed on the file)
IN TH E S U P R E M E C O U R T O F I N D I A
CIVIL APPEL L A T E JUR I S D I C T I O N

CIVIL APPEAL NOS. 4 0 7 2 - 4 0 7 3 OF 2 0 0 4

State of Raj a sth a n & Ors.

.... Appellants

Versus

Teeja Devi Swa mi & Ors.

.... Respondents

O R D E R

None appears for the respondent No. 1 despite service of notice.

Heard learned counsel for the appellants and counsel
for the

respondent No. 2- Rajasthan High Court Bar Association.

By the impugned judgment and order dated 13.11.2003 the Division

Bench of the High Court of Rajasthan, Jaipur Bench has directed framing of a

scheme for appointment of Government Advocates and directed that the selection for appointment may be made either by interviewing the candidates or without interview or by any other mode but the efforts should be made to find the best amongst those available at a particular time. The Division Bench further

directed that in case where the best available candidates may not compete or competent candidates may not be available from amongst the competitors, the Government may adopt other method such as the competent candidates may be offered the post by appointing them directly, though, they may not have applied for the post. Whatever method is adopted, it must be assured that search of meritorious candidate is undertaken and the appointments are made only on the basis of merit and not on any other consideration. While directing the

Government to frame a scheme by the impugned order the High Court also constituted a Selection Committee and also directed that the remuneration of Law Officers may be fixed on the basis of retainership plus allowance per court working day and allowance of drafting of reply per case or it may be fixed retainership plus fee not exceeding Rs. 1100 / - per case.

Learned counsel for the State has submitted that the appointment of Government Advocates is a prerogative of the State and it is not for the Court to constitute a Selection Committee and thereafter appointments be made as per the recommendations of the said Selection Committee. As per Section 24 of the Code of Criminal Procedure the government counsel had to be appointed for conducting criminal cases in the High Court and in the matter of civil cases it is the prerogative of the State Government that who should be appointed to conduct their cases. We take notice of the fact that because of poor assistance by government counsels the working of courts suffer. It becomes difficult for the Judges to work therefore, out of exasperation the Division Bench has appointed the Selection Committee.

Be that as it may, it is not the function of Courts to lay down the conditions for selection of government counsel/advocates. It is the prerogative of

the State Government. Except the appointment of Public Prosecutors in

accordance with the Code of Criminal Procedure other appointments are to be

made by the State Government. However, it is for the State Government to see

that only competent persons are appointed so that they can effectively assist the

Courts. After appointment of government counsel/advocates is a public function

and it cannot be done by favouritism and the government has to discharge its duty

in an objective manner. The State Government shall see to it that the work of

Courts do not suffer on account of insufficiency or incompetency of the

government counsel/advocates.

The appointment of government advocates being a prerogative of the State Government, we do not approve of the manner and procedure adopted by

the Division Bench of the High Court in the present case. Accordingly, the

impugned order is set aside. However, we hope and trust that the State

Government will appoint competent persons who can really assist the Courts for

proper discharge of their judicial functions. In this view of the matter, we allow

this appeal and leave it to the State Government to appoint persons of competence

as government counsel/advocates. Appeal is allowed. No order as to costs.

(A.K.M A T H U R)

.....J .

(MAR K A N D E Y KA T J U)

.....J .

New Delhi

July 31, 2007