* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on : 03.09.2013
% Judgment delivered on: 16.12.2013

\+ **WP(C) 360/2013**

PHAGUNI NILESH LAL ..... Petitioner

Versus

THE REGISTRAR GENERAL, SUPREME COURT OF INDIA & ANR. ..... Respondents

Advocates who appeared in this case:
For the Petitioner: Mr Rajeev Sharma, Mr Uddyam Mukherjee & Mr Sahil Bhalaik, Advs.
For the Respondents: Mr A.S. Chandhiok, Additional Solicitor General with Mr Ritesh Kumar, Mr Piyush Sanghi, Ms Shweta Gupta, Ms Honey Kumari & Ms Mallika Ahluwalia, Advs. for respondent no. 1.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J.

WP(C) No. 360/2013 & CM No. 739/2013 (Stay)

BACKGROUND

1. The petitioner is a topper of her batch. She pursued her studies in law at the Army Institute of Law, situate at Mohali (i.e., respondent no.2). Respondent no. 2, is affiliated to the Punjabi University, at Patiala, and is

recognized by the Bar Council of India.

1.1 The petitioner, has approached this court for redressal of her grievance, which stems from the stand taken by respondent No.1 to not, consider her application, for appointment as a Law Clerk-cum-Research Assistant (in short LCRA) for the year 2013-14, inter alia, on the following grounds. First, that respondent No.2 is not empanelled with it. Second, that the petitioner's application has not been forwarded by respondent No.2.

2. With this preface, let me sketch out briefly, the facts, which have led to the institution of the present petition under Article 226 of the Constitution.

2.1 The Supreme Court, on its administrative side issued a communication dated 03.12.2012, addressed to the Registrar, National Law University, Dwarka, New Delhi (in short NLU, Delhi), whereby it invited applications from LL.B. (Final Year)/ Semester/ Trimester students, who were likely to graduate in May-June, 2013, to consider them for selection as LCRAs in respect of, assignments commencing from 01.07.2013 and ending in the summer of 2014. A request was made that the recommendations should be supported by signed applications, in the format specified, accompanied by passport size attested photographs along with attested photocopies of mark-sheets/ grade-cards and other testimonials of eligible candidates. The recommendations, with indicated enclosures, were required to reach respondent No.1, latest by 31.01.2013.

2.2 The opening paragraph of the aforementioned communication dated 03.12.2012, clearly indicated that, the applications for consideration for short-term assignment as LCRA, as in the previous years, were being called from National Law Schools/ Universities on the "approved panel", and in

the "stand-by-category". Since, NLU, Delhi was evidently empanelled; applications were invited from its students.

2.3 The petitioner, who had joined the law course with respondent no. 2 in 2008, and was likely to graduate in 2013, approached respondent no. 1, to know the procedure for making an application for being considered, for appointment, as a LCRA, in the Supreme Court.

2.4 It appears that the petitioner was told that, students of only those National Law Schools could apply, which were placed on the approved panel of the Supreme Court.

2.5 The petitioner was, naturally, aggrieved, which made her approach, then Hon'ble the Chief Justice of India (CJI) vide communication dated 11.01.2013. The petitioner, claims that she did not receive a response to her communication; a fact which has not been disputed by respondent no.1.

2.6 Consequently, the petitioner filed an application under the Right to Information Act, 2005 (in short the RTI Act) with the Additional Registrar/ Central Public Information Officer (CPIO) of the Supreme Court on 14.01.2013. Several queries were raised in the said application. The petitioner, inter alia, sought information qua various aspects, which can broadly be paraphrased as follows:

(i) Whether there was, in place, a scheme/ guidelines or administrative orders for appointment of a LCRA?

(ii) Information was sought, with regard to Law-Colleges/ Universities which had been put on the approved panel or in the stand-by-category in the previous five (5) years, on a year-wise basis.

(iii) The criteria adopted for empanelment on the approved panel or stand-by-category.

(iv) List of candidates of Colleges and Universities, who had been shortlisted in the previous five (5) years, for the purpose of interaction with the Judges.

(v) List of candidates, who had been finally selected for appointment as LCRAs, in the previous five (5) years. In this regard the names of candidates along with the Colleges and Universities from which they had graduated, were also sought.

(vi) Copies of file(s), if any available, with regard to matters referred to above; were also sought.

3. In view of the fact that no information was supplied qua the queries raised by the petitioner, vide her application dated 14.01.2013, the petitioner approached this court by instituting a writ under Article 226 of the Constitution.

4. Notice in the captioned writ petition was issued on 22.01.2013, which was made returnable, on 28.01.2013.

4.1 At the hearing held on 28.01.2013, respondent no. 1 was represented by Mr A.S. Chandhiok, learned ASG, instructed by Mr Ritesh Kumar and Mr Piyush Sanghi, Advocates. At the said hearing, Mr Chandhiok, was queried by me, as to whether, there were in place any guidelines for empanelment of Universities/ Law Colleges. Since, Mr Chandhiok, did not have a ready answer, he indicated that he would examine the matter and revert to the court qua that aspect.

4.2 Mr Chandhiok, at the bar, also raised a preliminary objection vis-a-vis the maintainability of the petition, on the ground that respondent no.2, in which, the petitioner was at that point in time prosecuting her studies, had not applied for empanelment, and that, applications for appointment of

LCRAs could only be considered, if routed through, the institution, in which, the student (in this case the petitioner), was prosecuting his/her studies.

4.3 Having regard to the above submission, based on an oral prayer made by the learned counsel for the petitioner, the Army Institute of Law at Mohali, was arrayed as respondent no.2, to the instant proceedings.

5. The writ petition was thereafter, posted for hearing on 19.03.2013. In the interregnum, petitioner moved an application being: CM No. 2059/2013, with alternative reliefs. Firstly, for closing the right of respondent no.1 to file a counter-affidavit, since, it had not been filed, though time was allocated for the said purpose by the court. Secondly, for redressal of the petitioner's grievance that her application dated 14.01.2013 under the RTI Act had been rejected by respondent no. 1 vide communication dated 11.02.2013; ostensibly on the ground of pendency of the instant writ petition.

5.1 As regards the first prayer, Mr Chandhiok assured the court that the counter-affidavit will be filed in the course of the day; with a copy served on the petitioner. In so far as the alternative prayer was concerned, it was not pressed in view of the following clarification made by me.

5.2 It was made clear that if, the petitioner was aggrieved, she could approach the relevant statutory authority, under the provisions of the RTI Act, and that, in so far as this court was concerned, there was no injunction issued qua disclosure of any information. The aforesaid clarification was issued by me vide order dated 20.02.2013.

5.3 The aftermath of the clarification issued on 20.02.2013 was that, the First Appellate Authority vide order dated 07.03.2013 ruled that pendency

of proceedings before this court will not warrant exemption under Section 8(1)(b) of the RTI Act, and therefore, the stand taken by the CPIO claiming exemption under the said section, would not survive. The matter was consequently remanded to the CPIO for fresh consideration in accordance with law within a period of five days from the date of receipt of the said order.

5.4 Based on the aforesaid direction, the CPIO vide order dated 12/13.03.2013 briefly responded as follows vis-à-vis queries raised by the petitioner in her application :- In so far as Queries 1 to 5 were concerned, it was stated that information sought thereby was already furnished to the petitioner vide respondent no.1's counter affidavit filed in the instant writ petition. As regards, query nos.6 and 7 were concerned, it was indicated that information had been complied and was reflected in Annexures A and B respectively, appended to the response. Lastly, in respect of query no.8, the stand taken was that the files in issue which contained the information, related to a vast period, and therefore, compiling the information sought for, would dis-proportionately divert the resources of the Registry, and would thus, be detrimental not only to its functioning, but would also, make the system unworkable in practice.

5.5 It appears that, in the interregnum, the petitioner had filed a second application under the RTI Act dated 25.02.2013, with the CPIO of the Supreme Court. The queries, inter alia, raised in this application sought responses from respondent no.1, in respect of the following aspects broadly:

(i). Whether the Supreme Court had at any time invited applications from Law Colleges / Universities for empanelment in the "Approved Panel" and the "stand-by-category"?

(ii). Whether advertisements were issued or letters were sent to Colleges / Universities informing them about the existence of an approved panel or a stand-by-category for the purpose of engaging their students as LCRAs.

(iii). List of Colleges / Universities which had applied to the Supreme Court or in response to a communication inviting applications for being empanelled in the approved panel or in the stand-by-category.

(iv). Did the Indian Law Society's Law College, Pune (in short ILS, Pune) apply, for being put on the approved panel or in the stand-by-category?

(v). Amongst Colleges and Universities which were put on the approved panel or in the stand-by-category, the number of Institutes which had been empanelled on a *suo motu* basis, and those, which had been empanelled based on the applications for empanelment.

5.6 In respect of most of the queries referred to above, relevant documents were sought by the petitioner.

5.7 Evidently, vide order dated 23.03.2013, the CPIO disposed of the petitioner's RTI application dated 25.02.2013. In response to the first two queries, it was indicated that no applications were invited or advertisements were taken out for placing Law Colleges and Universities on the approved panel or in the stand-by-category. This according to the response given was done: "in the light of initial decision to requisition the services of suitable candidates from various National Law Schools / Colleges."

5.8 As regards query no.3, it was, inter alia, indicated that letters were not sent to Law Colleges and Universities informing them of the decision to have in place an approved panel and a stand-by-category; however, the : "concerned National Law Schools / colleges were informed in writing about their empanelment."

5.9 As regards query no.6, it was indicated that ILS, Pune had sent a letter of request and since the letter did not originate from the Supreme Court the petitioner was advised to contact the concerned authority.

6. In so far as query no.7 was concerned, it was indicated that number of Institutions had sent letters of request, and since, the data / information was not tabulated and available in the manner sought, that information could not be supplied. A further justification for the same, was provided : which was, that files were spread over a period of time and therefore, "detaching the concerned papers would be detrimental to the preservation of the records in question and may prejudicially affect the functioning of the Registry."

6.1 As regards query no.8, it was indicated that files were spread over a period of time and that compilation of information sought would disproportionately divert resources and would be detrimental to the functioning of the office.

6.2 Against orders of the CPIO dated 12/13.03.2013 and 23.03.2013, the petitioner preferred two separate appeals with the First Appellate Authority on the same date i.e., 03.04.2013. Both appeals were dismissed by the First Appellate Authority by an order dated 01.05.2013. Furthermore, the information sought by the petitioner vide her RTI application dated 16.04.2013 was declined by the CPIO vide order dated 16.05.2013.

6.3 As is obvious the aforesaid events pertaining to the applications preferred under the RTI Act and their disposal went on in tandem with the prosecution of the writ petition. The applications and orders, passed on them have been brought on record, by way of affidavits, filed by the petitioner. In the interregnum the writ petition was argued on several dates. Counsels were given opportunity to not only rebut but also make

submissions in sur-rejoinder. Finally, the matter was reserved for judgment. The parties, in the meanwhile, filed their respective written submissions while the matter was in progress.

SUBMISSIONS OF COUNSELS

7. Arguments on behalf of the petitioner were advanced by Mr Rajeev Sharma, Advocate, while those on behalf of respondent no. 1 were advanced by Mr Chandhiok, learned ASG. Respondent no.2, though served, chose not to participate in the proceedings. Respondent no. 2, has thus gone unrepresented. Counsels for both sides argued broadly, in line with their respective pleadings filed in the matter.

7.1 I must also note that though, both on behalf of the petitioner and respondent no.1, several sets of written submissions have been filed, the basic emphasis and the central point of their respective submissions remained the same. Let me, therefore, sketch the broad contours of the submissions made by the learned counsels on each side.

8. Mr Sharma, broadly, argued as follows:

(i) There was no communication available in public domain, which would enable Law Colleges and Universities to apply for empanelment against a known criteria.

(ii) There was a policy of pick and choose, which was ad-hoc and discriminatory. This point was sought to be emphasized by seeking to point out that some Institutions were empanelled even though they had not applied for empanelment, while others were empanelled based on bare, letters of request. In respect of the latter, examples of ILS, Pune and Symbiosis Law School, Pune (in short Symbiosis, Pune) were cited. It was pointed out that,

in stark contrast, respondent no.2 was not empanelled despite having sent the letters of request for consideration of its students for appointment as LCRAs.

(iii) The criteria, which is articulated in the counter-affidavit, such as, Institution-ranking, library size, quality of faculty etc., fails to disclose, what was the relevant benchmark against each criteria, and when, was the last time such an exercise had been conducted, with regard to empanelment of Law Colleges/ Universities.

(iv) There is no policy in place. The exercise conducted is ad-hoc. The selection of a candidate, should be based on merit of the candidate / applicant, and not, on the merit of the Institution, in which, the candidate / applicant prosecutes his/her studies. It was submitted that, it was quite possible that a first rate Institution ends up producing a student of average ability, while an Institution, which is otherwise mediocre, may produce a student of great ability and knowledge. Respondent no. 1, has created a class of Institutions which are empanelled and those which are not empanelled, and such classification, has no nexus with the stated object; which is, to render legal assistance to the Judges of the Supreme Court and initiate fresh Law graduates to the judicial system/ judicial process. There can be no distinction among students of various Law Colleges, all of which, are necessarily required to be recognized by the Bar Council of India. The classification is thus artificial and bereft of any rational differentia.

(v) Assuming, without admitting, that the classification was valid, the manner in which the stated policy was put into practice, was arbitrary and unconstitutional. Admittedly, no general advertisement was issued with regard to the process of empanelment of the Law Colleges/ Universities.

The process for empanelment thus, lacked transparency, which was one of the important facets of Article 14 of the Constitution.

(vi). The LCRAs, are paid remuneration at the rate of Rs.25,000/- per month, out of the consolidated fund of India. It would make little difference whether the LCRAs are employed or engaged as long as their engagement is with a public body; in this case, a constitutional body.

(vii). Every administrative action is subject to judicial review, what may vary though is the extent or the depth of judicial review.

(viii). The argument of administrative convenience cannot be used to jettison the mandate of Article 14. Nothing, prevented respondent no.1, from evolving a rational criteria, which would stand the test of Article 14 of the Constitution.

8.1 In support of his submissions, Mr Sharma relied upon the following judgments:

Akhil Bhartiya Upbhokta Congress vs. State of Madhya Pradesh & Ors. AIR 2011 SC 1834; Radhey Sham vs. Lieutenant Governor & Ors. (1970) ILR (II) Delhi 260; Ghulam Qadir vs. Special Tribunal & Ors. (2002) 1 SCC 33; Minor A. Peeriakaruppan vs. State of Tamil Nadu & Ors. (1971) 1 SCC 38; Ramana Dayaram Shetty vs. International Airport Authority of India & Ors. (1979) 3 SCC 489; Kumari Shrilekha Vidyarthi & Ors. vs. State of U.P. & Ors. (1991) 1 SCC 212; Delhi Transport Corporation vs. D.T.C. Mazdoor Congress & Ors. AIR 1991 SC 101; H.C. Puttaswamy & Ors. vs. The Hon'ble Chief Justice of Karnataka High Court, Bangalore & Ors. AIR 1991 SC 295; judgment of the Bombay High Court in W.P. (Lodg.) No. 2825/2012 titled ***Sonali Pramod Dhawde & Ors. vs. Central Bank of India & Anr.*** and ***Natural Resources Allocation in re. Special***

Reference No. 1 of 2012 (2012) 10 SCC 1.

9. As against this, Mr. Chandhiok, based on the pleadings filed, contended as follows :-

(i). The Writ petition is not maintainable as the petitioner obtained her Law degree from respondent no.2, which is not on the approved list of Institutions, maintained by respondent no.1. In this behalf, it was also submitted that in any event, an application to consider appointment as LCRA can be considered if, it is sponsored or recommended by the concerned Institute; which as indicated above, has to find a place on the panel approved by respondent no.1.

(ii). The engagement of a LCRA, could not be equated with an appointment to a civil post as there does not exist an employer-employee relationship.

(iii). The engagement being in the nature of a "personal engagement", it was not open to judicial review. It is for respondent no.1, to select LCRAs and therefore, in the matter of their engagement, the concept of public office does not come into play. In this behalf, it is stated that LCRAs are paid a fixed honorarium of Rs.25,000/- per month and not a salary.

(iv). No person, including the petitioner, can claim a right to be appointed / selected as it is a position of "great trust and confidence".

(v). The petitioner, cannot compel respondent no.1 to utilize her services as a LCRA, and thus, in effect, fetter the choice of respondent no.1.

(vi). The scheme for selection of LCRAs was evolved by orders of the Hon'ble CJI(s). The scheme envisages empanelment of Colleges, inter alia of "known reputation", especially, the National Law Schools. Though, this does not undermine the quality or credence of other good Colleges, the

scheme is not amenable to challenge. The entire scheme, is meant to shortlist candidates for engagement as LCRAs.

(vii). Information with regard to procedure for making an application for engagement as LCRA is available in the annual report of the court, which mentions the details and the procedure for engagement.

(viii). There is no preference given to any particular Law School / College. Apart from National Law Schools and Universities, other Colleges, on consideration of their requests for empanelment, are placed in either "other category" or "stand-by-category".

(ix). As and when Colleges / Institutes apply for empanelment, their request is placed before the concerned Committee of the court, and thereafter, empanelment is made on the recommendations of the concerned Committee or on the directions of the Hon'ble CJI.

(x). On the last occasion, when some Colleges / Institutes had applied for empanelment, on the direction of the concerned Committee, the following information was sought :- performance / result of candidates for previous five (5) years; size of the library maintained by the concerned College/ Institute, with details of library information services provided to the students; the profile of the faculty available in the College / Institute; and lastly, the details of courses offered alongwith copies of syllabus, was called for from the concerned College / Institute. In other words, the request for empanelment is dependent on the criteria indicated above, which will include, the standing of the concerned College / Institute, in the order of ranking.

(xi) In view of the fact that there are innumerable Law Colleges / Law Schools all over the country, it would be practically impossible to consider

the candidature of each Law College directly. The method of shortlisting Institutions and considering students for engagement based on sponsorship of the selected Institute, is valid, as otherwise, it would be next to impossible to interview, and then, select candidates, if all, candidates were to apply directly to respondent no.1. These being reasonable restrictions, there is no violation of Article 14 of the Constitution of India.

(xii). The nature of engagement requires not only specialized skills but also maintenance of confidentiality and trust. Therefore, the method evolved for selection cannot be found fault with.

(xiii). It is open for any Institution recognized by the Bar Council of India conducting a professional law course to forward its request for empanelment, which would be examined by the concerned Committee; there being no restriction as to eligibility or norm.

(xiv). The challenge by the petitioner, is to the empanelment of Law Colleges / Universities. There is no grievance made out in the writ petition with regard to requirement of recommendation or sponsorship by the concerned Law College / University, in which, the applicant has pursued his or her Law course. The fact that the petitioner was not sponsored or recommended by respondent no.2, is not denied. Therefore, the issue concerning empanelment cannot be raised by her in the present writ petition as it is not in the nature of a public interest litigation.

(xv). Respondent no.2, has chosen not to enter appearance before this court despite being impleaded as a party vide order dated 28.01.2013. Respondent no.2 vide communication dated 17.02.2006, had sought placement of its students, as LCRAs; which is when, it was informed that its students could be considered only after it was empanelled with the Supreme Court. The

respondent no.2, since then, has not reverted qua the issue, and therefore, the present writ petition on behalf of the petitioner i.e., the student of respondent no.2, is not maintainable, as respondent no.2 is not interested, in empanelment.

(xvi). The petitioner, has not laid a challenge with respect to Colleges which have found place in the empanelment list; that challenge, in any case, would not be maintainable as the empanelled Institutions have not been made parties to the present proceedings.

(xvii). The selection process for engagement of LCRAs for the year 2013-2014 has already commenced, and therefore, the selection process cannot be challenged by way of the present writ petition.

(xviii). The process of selection of candidates is a policy decision and an eligibility criteria, and consequently, not amenable to judicial review.

(xix). There are several ways for selecting LCRAs, it is ultimately for respondent no.1 to adopt a method, which best suits its purposes.

(xx). The policy, being uniform, has to be examined in the context of the limited requirement for engagement of LCRAs. The requirement of respondent no.1, as of now, is 60 to 70 LCRAs, which has to be seen in the backdrop of the fact that there are presently at least 900 Law Colleges in India. While testing the policy, on the touchstone of Article 14, these facts would have to be borne in mind. The resources of the court are limited, and therefore, some method for shortlisting is required to be used. This court, cannot interfere with the policy formulated, on the ground, that it is erroneous, or that, there is a better, fairer or wiser alternative available.

(xxi). Empanelment with the Supreme Court is an eligibility criteria for enabling consideration of Law graduates of a particular Institute, for

engagement as LCRAs. It is settled that, it is for the rule making authority or the appointing authority to prescribe the mode of selection, and a minimum qualification for any recruitment.

(xxii). Classification/selection based on "institutional preference" is a definite and an identifiable criteria, which satisfies the test of valid classification as mandated by Article 14 of the Constitution. Classification based on Institutes is not violative of Article 14 of the Constitution. Reliance in this regard is placed on ***Saurabh Chaudri & Ors. vs. Union of India & Ors., 2003 11 SCC 146*** at pages 175 and 177 (paragraphs 64 and 70).

(xxiii). The engagement of LCRAs, is a facility, provided by the court to young Law graduates, which cannot be claimed as a matter of right.

(xxiv) The criteria for empanelment is in public domain. The petitioner, who is a student of respondent no.2, cannot speak on behalf of Law Colleges/ Universities. In so far as respondent no.2 is concerned, it was informed of the procedure as far back as in 2007.

(xxv). LCRAs are not "officers" and "servants" of Supreme Court as envisaged under Article 146(2) of the Constitution. The Supreme Court Officers and Servants (Conditions of Service and Conduct) Rules, 1961 are not applicable to LCRAs. Terms and conditions vis-à-vis salaries, allowances, leave, pension, and procedure for disciplinary proceedings as applicable to Supreme Court "officers" and "servants" are not applicable to LCRAs.

(xxvi). The engagement of LCRAs, to render assistance to the Judges cannot be equated with distribution of "state largesse" or award of a contract, tender or even holding of an auction. Their engagement can,

however, be compared with engagement of lawyers by clients.

(xxvii). Merely because LCRAs are paid a stipend / honorarium, the nature of engagement will not evolve into one concerning a "public office" or "public employment".

(xxviii). It is incorrect to contend that once, Law Colleges are recognized by the Bar Council of India, any further classification would be violative of Article 14 of the Constitution. The Supreme Court in an order dated 29.06.2009 passed in SLP (C) No.22337/2008 in the case of ***Bar Council of India vs. Bonnie Foi Law College & Ors.*** expressed its concern regarding affiliation and recognition of Law Colleges by the Bar Council of India. The Bar Council of India has now introduced the All India Bar Examination (in short Bar Exam) for the purposes of admitting Law graduates to the Bar and all students studying in recognized Colleges are called to the Bar only after they qualify the Bar Exam. Therefore, to contend that once the Institute is recognized by the Bar Council of India, a further classification cannot be made is, erroneous. Further classification, which is based on selection of Institutes, is a valid classification. Therefore, classification / selection which has its basis in institutional preference is, a valid classification, as it bears out a definite and identifiable criteria.

(xxix) Article 14 permits reasonable classification. Selection of Law graduates only from approved Colleges is found on intelligible differentia which has rational nexus to the objects sought to be achieved, namely, shortlisting and rendering effective assistance to the Judges.

(xxx). Merit, is given due weightage. The process of selection has two stages; in the first stage, approved Institutes are empanelled. In the second stage, the approved Institutes recommend meritorious students for

sponsorship. In this regard, example is cited of the Punjab and Haryana High Court.

(xxxi). It cannot be said that quality of education is not dependent on the college, in which, a student pursues his or her education. Colleges have a role in preparing and educating their students. It is a matter of common knowledge that to a large extent, students can be judged on the basis of the Institute, in which, they pursue their education. It is the educational Institutions which lay the foundation for morality, ethics and discipline, which is imbibed by its students. Therefore, maintaining a panel of approved Colleges does not violate Article 14 of the Constitution.

9.1 In respect of the aforesaid contentions, counsels for respondent no. 1 apart from judgments already cited above have relied upon the following judgments:

Secretary, A.P. Public Sevice Commission vs. B. Swapna & Ors. (2005) 4 SCC 154; Directorate of Film Festivals & Ors. vs. Gaurav Ashwin Jain & Ors. (2007) 4 SCC 737; Chandigarh Administration through the Director Public Instructions (Colleges), Chandigarh vs. Usha Kheterpal Waie & Ors. (2011) 9 SCC 645; Sanchit Bansal & Anr. vs. Joint Admission Board & Ors. (2012) 1 SCC 157; Saurabh Chaudri & Ors. vs. Union of India & Ors. (2003) 11 SCC 146; State of U.P. & Ors. vs. U.P. State Law Officers Association & Ors. (1994) 2 SCC 204; State of U.P. & Anr. vs. Johri Mal (2004) 4 SCC 714; State of Uttar Pradesh & Ors. vs. Rakesh Kumar Keshari & Anr. (2011) 5 SCC 341; Vinay Balachandra Joshi vs. Registrar General, Supreme Court of India & Anr. (1998) 7 SCC 461; Federation of Central Government SC/ST Employees vs. Kochi Refineries Ltd. ILR 2006 (2) Kerala 699 and judgment of the Madras High Court in W.P.

No.5554/2009 and M.P. Nos. 1/2009 and 2/2009 titled ***Chennai Petroleum Employee's Union vs. The General Manger, H.R., Chennai Petroleum Corporation Ltd.***

REASONS

10. Having deliberated upon the matter, it is quite evident that the central issue is narrow. The nub of the matter is: does the petitioner have a right to be considered for appointment as a LCRA; sans the empanelment of respondent no.2 on the Supreme Court's approved panel or in the stand-by-category or even in the "other colleges category". More so, given the fact that the petitioner's application is not sponsored by or routed through respondent No.2. The latter objection is, though, really a non-sequitur, if the first objection holds.

10.1 These are objections on merits. The defence of respondent no.1 though, has several legal layers. These issues can be broadly paraphrased as follows :-

(i) First and foremost, does the petitioner have locus; (ii) Second, is the decision of the Supreme Court to maintain a panel, a matter of "policy" and/or an "eligibility criteria" and therefore, completely immune to mandate of Article 14 of the Constitution; (iii) Third, institutional preference is not violative of Article 14. Eminence of Institute ensures merit as, the best students, are sponsored ultimately. This process of selection permeates ethicality, discipline and morality in the legal profession and judicial fraternity; (iv) Fourth, the engagement of a LCRA is not a public employment or appointment to a civil post. The engagement is for the benefit of the Judges of the Supreme Court to assist them in discharge of

their judicial duties, and to initiate, Law graduates to complexities of the judicial system.

11. Let me attempt to deal with each of the objections in seriatim. Locus is an attribute attached to the legal standing of a litigant, who approaches an adjudicatory forum, for redressal of his/her grievances. While, the contours and texture of the locus may vary to some extent depending on the forum approached and the remedy availed of, the core attribute remains the same, which is, the existence of an enforceable legal right. The right, in respect of which, enforcement is sought could be statutory, constitutional, contractual, customary or a common law right. As long as there is a right, it is axiomatic that a court would necessarily have to provide access for enforcing such a right.

11.1 Those who are kept out are "busy bodies" or "meddlesome interlopers" [see ***Jasbhai Motibhai Desai vs. Roshan Kumar, Haji Bashir Ahmed & Ors. (1976) 1 SCC 671***]. The test ordinarily followed is: does the litigant have sufficient legal interest in the matter which propels the litigant to approach the Court, to ventilate his/her grievance. To put it differently is the litigant aggrieved by acts of omission and commission of the opposite party; which measure may or may not be common to a large body of similarly placed persons. If that be so, he/ she would be person aggrieved and, in that sense, have sufficient legal interest to approach the court for redressal of his / her grievance. If I am right in adopting this measure, let me examine whether the petitioner shores up to the said measure.

11.2 The petitioner is, undisputedly, a Law graduate, who is otherwise eligible for consideration for appointment as a LCRA but for the fact that respondent no.2 is not empanelled with the Supreme Court, and therefore,

in that sense, whether or not her application is routed through respondent no.2 is, really irrelevant. The fact that the respondent no.2, is recognised by the Bar Council of India, is also not in dispute.

11.3 The "Policy" or criteria of empanelment of the sponsoring Law College/University impacts the petitioner's right to be considered for an assignment as a LCRA.

11.4 Therefore, can the petitioner's legal standing be put in issue solely on the ground that respondent no.2, having not assailed the policy of empanelment, its alumni i.e., the petitioner is not entitled to maintain the instant petition. The fact that the sponsoring Law College or University is not empanelled, for whatever reasons, is a threshold bar, and in my opinion, provides, sufficient legal interest, to the petitioner, to lay a challenge to the regime which is put in place, as it substantially impacts her right, to be considered, for appointment as a LCRA.

11.5 Dovetailed in this argument advanced on behalf of respondent no.1, is the argument that appointment as a LCRA, is not a right. The submission made on behalf of respondent no.1 is that it is an engagement, for the ***"personal benefit"*** of the Judges of the Supreme Court to render assistance in respect of judicial duties, that they are called upon to discharge, and to initiate LCRAs in the working of the judicial system and its myriad processes.

11.6 A "right", in its narrowest sense, in present context, could be described as a claim, which one person asserts he / she ought to receive, which is, withheld by the opposite party. (Black's Law Dictionary, 6th Edition, Page No. 1324).

11.7 The fact that the engagement as a LCRA is for assistance of Judges,

does not make it a personal engagement. On respondent no.1's own showing, the engagement is to assist a Judge in the discharge of his / her judicial duties. It is, in my view, a claim of engagement directed towards an identifiable institution, that is, the Supreme Court, and hence, cannot, but be a right, enforceable in law. An infraction of this right would certainly lead to a grievance, and thus, supply necessary ingredients to maintain a petition of this nature.

11.8 In my opinion, the petitioner has the locus standi to maintain the instant petition.

12. This brings me to the second argument advanced on behalf of respondent no.1 that the entire scheme of empanelment, if one could refer to it as one, for want of a better expression, is a policy or, in the alternative, an eligibility criteria, and therefore, immune from challenge under Article 14.

12.1 Before I dwell on the argument of immunity from challenge, let me advert briefly to the manner in which such scheme came to be formulated, as per respondent no.1's stand, taken in its return, filed with the court.

12.2 It appears that pursuant to order dated 02.07.2002 passed by then Hon'ble the CJI, for the first time services of "suitable law graduates from various National Law Schools"; such as, Bangalore, Bhopal, Jodhpur, Calcutta and Hyderabad, were availed of.

12.3. In this behalf, it must be noticed that reference is made to order dated 27.08.2002 passed by the then Hon'ble CJI, by which the Registry of the Supreme Court was directed not to entertain applications directly from students of National Law Schools, and in the event, an application was sent directly, the Registry of the Supreme Court was directed to notify the applicant that she / he was required to secure a recommendation from the

concerned National Law School before, she / he could be considered for engagement as a LCRA.

12.4. The said order appears to have been followed by yet another order dated 04.11.2004, which is also stated to be issued by the then Hon'ble CJI, whereby guidelines were put in place to streamline the system for engagement of LCRAs.

12.5. It is also indicated in the counter affidavit of respondent no.1, in this behalf, that following a proposal mooted on 15.12.2005 that another category of prominent Law Colleges/ Institutes conducting five (5) years Law degree course should be created and candidates found suitable from this category be put on wait-list and considered if, respondent no.1 was not able to get suitable candidates from National Law Universities / Colleges; the then Hon'ble CJI vide order dated 16.12.2005, constituted a Committee of Judges of the Supreme Court to look into the matter and make suitable recommendations.

12.6. Consequent thereto, vide order dated 15.02.2006 of then Hon'ble the CJI, four (4) Colleges were put in the stand-by-category.

12.7. It appears that the matter again gained attention of the Supreme Court and based on the recommendations of a Committee of Judges of the Supreme Court, the then Hon'ble CJI vide order dated 28.01.2009 directed that all National Law Schools / Universities should be empanelled for consideration of their students for selection as LCRAs. This order, it appears, came to be passed for the reason that some Law Schools/ Universities were established under State Laws.

12.8. Evidently, based on the recommendations of the Committee of Judges of the Supreme Court, Hon'ble the CJI vide order dated 03.03.2009

approved the guidelines which are presently in vogue. It may be pertinent to note at this stage the catchment area continued to be restricted to "***eligible National Law Schools / Colleges on panel and in stand-by-category***".

13. Presently there are: twelve (12) National Law Schools/ Universities on the approved panel; four (4) Law Colleges in the stand-by-category and two (2) in the other colleges category.

13.1 On respondent no.1's own showing, there are 900 Law Colleges in India against which what we have is a select category of 18 Law Colleges, whose students are privileged to be considered for grant of entry into the portals of the country's most vibrant, reputed, and hallowed Institution, i.e, the Supreme Court.

13.2 In this backdrop, let me continue with the discussion, whether the decision to empanel simplicitor; partakes the character of "policy" or "eligibility" criteria.

13.3 The term policy in its simplest form would mean general rules applied or made applicable to a particular course of action. The action could be that of the Government, legislature, judiciary or any instrumentality of the State or even a private body. Though, ordinarily courts are not concerned with policies of private bodies unless they extend to the realm of public law. It cannot be in dispute, as it appears to be too well settled that courts are slow to strike down "policy" on the ground that a better policy was available at hand. Courts cannot and do not substitute their views or the wisdom, which went into the construct of the policy. The authority charged with the responsibility to formulate a policy is largely left to its own devices, as it is assumed to know the prevailing difficulties and circumstances which, in the first instance, perhaps, would have led to its formulation. The policy

formulator is thus given a wide latitude; no exactitude or mathematical precision is expected of it. There is what is felicitously referred to as "play in the joints". [see ***R.K. Garg vs. Union of India and Ors. (1981) 4 SCC 675***]. The only area of judicial intercession or review is: when and where it is alleged that the impugned policy violates a statutory provision or is violative of fundamental rights of a citizen or the provision(s) of the Constitution.

13.4 In the instant case, though, the first and foremost question which comes to mind is: is there a policy in place? The counsels for respondent no.1, in the alternative labelled the banding together of some eighteen (18) National Law Colleges / Universities, in three different categories, referred to above, as an eligibility criteria. What that criteria is: is not spelled out, though this issue was flagged at first returnable date in the matter. Therefore, the immunity sought and propounded on behalf of respondent no.1 is, to my mind, not available.

14. I will touch upon this aspect in greater detail in the latter part of my judgment, let me before that deal with the third objection, which is, institutional preference, is not violative of Article 14.

14.1 A quick scan of the judgments of the Supreme Court would show that the principle of institutional preference was examined for the first time in the recent history of the court in ***Dr. Jagdish Saran & Ors. vs. Union of India (1980) 2 SCC 768*** and ***Dr. Pradeep Jain & Ors. vs. Union of India & Ors. (1984) 3 SCC 654***. In ***Dr. Pradeep Jain's*** case wherein, ***Dr. Jagdish Saran's*** case was discussed, the Supreme Court sustained the principle of institutional preference by scaling down the percentage of students inducted from preferred Institutions to a reasonable degree. In sum, reservations in

post graduate courses in medicine were restricted to 50%. In courses dealing with super specialities, the argument advanced for reservation on principle of institutional preference, was repelled by the court.

14.2 The Supreme Court as a matter of fact in ***Municipal Corporation of Greater Bombay vs. Thukaral Anjali Deokumar & Ors., 1989 (2) SCC 249*** had struck down Bombay Municipal Corporation (BMC's) notification, providing for College wise preference. A three Judge Bench in ***AIIMS Students' Union vs. AIIMS & Ors., (2002) 1 SCC 428***, had once again, disapproved of reservations in post graduate courses in Medicine on the ground of institutional preference; though justified a "certain degree of preference", for students of the same Institution seeking to prosecute their studies in their own Institute on the grounds of "convenience", "suitability" and "familiarity". This was the rationale adopted from Hon'ble Mr. Justice R.S. Pathak's concurring judgment (as he then was) in ***Dr. Jagdish Saran's*** case. The caveat entered was that such preference cannot be unreasonable or excessive. The court speaking through Hon'ble Mr. Justice R.C. Lahoti (as he then was) went on to say "...*The preference has to be prescribed without making an excessive or substantial departure from the rule of* ***merit*** *and* ***equality****. It has to be kept within limits. Minimum standards cannot be so diluted as to become practically non-existent. Such marginal institutional preference is tolerable at postgraduation level but is rendered intolerable at still higher levels such as that of superspeciality. In the case of institutions of national significance such as AIIMS, additional considerations against promoting reservation or preference of any kind destructive of merit become relevant...*"

14.3 In ***Saurabh Chaudri's*** case, the Constitution Bench was considering

whether reservation based on domicile could be sustained. The issue was enlarged to include examination of the constitutionality of admissions gained by adopting the principle of institutional preference. The court sustained the application of principle upon taking into account the sociological and economic realities of the country. The majority judgment though restricted institutional preference to the extent of 50% of total seats in the MBBS course and, qua all other aspects applied its decision rendered in ***AIIMS Students' Union*** case. (see paragraph 74 at page 178).

14.4 The upshot of these judgments is that, in the field of medical education where seats are to be filled up for post graduate courses, the principle of institutional preference, can be applied bearing in mind that it does not become either ***excessive*** or ***unreasonable***.

14.5 The facts of the present case quite clearly portray that, in considering engagement of applicants as LRCAs, the principle of institutional preference is not applied, what is instead applied is a rule of thumb, which is, that only applicants belonging to the empanelled class, are considered for engagement of LCRAs, to exclusion of others. Assuming for a moment that mere segregation of Institutions (rather than preference of applicants of one Institution as against the other) brings into play the principle of Institutional preference; to my mind, it cannot be constitutionally sustained, as it does not leave scope for consideration of Law graduates of other Institutions, which are not empanelled.

14.6 To put it differently, it constitutes 100% reservation in favour of applicants belonging to empanelled Institutes. To contend that it is only such Institutes which produce students imbued with talent, ethicality, discipline and morality, is not based on any empirical data. While the

probability of Institutes of excellence producing first rate students is high, it cannot exclude the possibility of several jewels (metaphorically speaking) being hidden in Law Colleges situate in remote parts of the country.

14.7 The argument, in my view, not only seriously negates the avowed intent of the equality clause in our Constitution of furthering merit and only merit where all things are even, but also, damages the prospect of advancing the principle of affirmative action by restricting the source of entry to the empanelled Institutes. If I were to embellish this rationale, I would look no further than to the following greats who did not graduate from Colleges of "known" eminence. The father of the nation Mohandas Karamchand Gandhi passed his matriculation exam from Samaldas College in Bhavnagar, presently in the state of Gujarat though he studied law at the University College at London; Sh. C. Rajagopalachari did his initial schooling in a village school in Thorapalli and graduated in Arts from Central College in Bangalore. He studied law at the Presidency College, Madras. Sh. Abdul Kalam Azad had no formal education. He was taught at home. He was recognized as a renowned scholar, poet, linguist and a brilliant debater. Albert Einstein failed to reach the required standard in the general part of examination held by the Swiss Federal Polytechnic in Zurich though he attained exceptional grades in physics and mathematics. His contribution to science needs no articulation. Abraham Lincoln was a self taught person. He cleared his bar exam in 1836. Dr. Kailash Nath Katju passed his LL.B. examination from Allahabad University. Sh. Bal Gangadhar Tilak obtained his law degree from Elphinstone College, Mumbai. Sh. M.C. Setalvad studied law at evening classes in the Law College at Elphinstone College, Mumbai. Hon'ble Mr. Justice Sir Harilal Jekisundas Kania, Hon'ble Mr.

Justice Mahadev Govind Ranade, Sh. H.M. Seervai and Sh. N.K. Palkhiwala were all alumni of Government Law College, Mumbai (in short GLC, Mumbai), which is one of the Colleges put in the stand-by-category. These are only a few examples which have come to my mind.

15. This brings me to the other argument advanced on behalf of respondent no.1 which is that empanelled Institutes constitute a class by themselves. And that, classification of such Institutes is based on intelligible differentia, which has, nexus with object sought to be achieved.

15.1 I must only note that respondent no.1, apart from formulating the, well stated principle both in its affidavit and through oral submissions advanced on its behalf, has provided no material to establish the basis for such classification.

15.2 There is no basis given for including eighteen (18) Law Colleges in the "approved panel", "stand-by-category" and the "other colleges" category. There is no clue as to the basis for empanelment or shortlisting, as respondent No.1 would like to refer to it. What is befuddling is: Is the empanelment based on their location or, their performance or, the eminence of their faculty or, even the availability of infrastructural facilities. In the affidavit-in-reply, respondent no.1 has averred that in the recent past while considering applicants, performance / result of previous five (5) years, library size, profile of faculty and courses offered, were aspects, which were taken into account.

15.3 The assertion, to say the least, was not backed by any data set forth in the affidavit. That apart, the more serious lacuna was, the absence of the benchmark against which each of these attributes were measured.

15.4 To take this point further, if performance of the Institutes was

measured; was it based on the total pass percentage or say based on the percentage of students who had secured first division(s) or say distinction(s). How was the content and quality of the library determined? Was the quality of the Library evaluated by taking into account the number and variety of law reporters and journals, made available? Was the evaluation confined to Indian reporters, or were foreign journals and magazines, included? Were facilities in the form of web based research, included in the assessment?

15.5 Similarly, while assessing the quality of faculty available, what weightage was given to the number of post graduates and doctorates employed by the Institute? Was the extent of permanent and visiting faculty of foreign law schools of international repute, taken into account? Was the availability of opportunities of exchange programmes, noticed? Whether, the quality of courses offered take into account areas of emerging interest, apart from traditional subjects? Did the assessment made evaluate as to whether the courses offered included emerging fields such as: biotechnology, space law, cyber law, genetics, etc.? More importantly, whether the availability of courses, was assessed keeping, in mind the faculty available, to teach such courses.

16. It is quite possible that most of the empanelled Institutes may come through if parameters cited hereinabove, were applied. Therefore, the question is not as to whether those Institutes which are already empanelled, are Institutes of excellence. The question is: was such an exercise carried out. The more substantial area of concern is : were benchmarks fixed and put in public domain.

16.1 If one were to go by answers to the RTI queries of the petitioner given by respondent no.1, it is quite clear no advertisements were issued, calling

for applications, generally, from Institutes to seek such empanelment.

16.2 The argument advanced that the annual report of the Supreme Court adverted to the aspect of empanelment, in my view, is a poor substitute for having a public advertisement. Even if one were to assume that information given in the annual report ought to suffice, what is decidedly not disclosed is, the relevant benchmark against which respondent no.1 has thought it fit to empanel some eighteen (18) Colleges.

16.3 What makes the empanelment nebulous is the fact that inter se the empanelled Institutes there are categories put in place. There is no basis disclosed for relegating a Law College to "stand-by-category" or "other colleges" category. The Law Colleges and Universities, which are listed out under the approved category have an average age ranging from 5 years to 27 years, if the date of their establishment is taken into account. In contrast the average age of the Law Colleges and Universities, referred to in the remaining two categories i.e., the stand-by-category and other colleges category ranges from 51 years to 158 years and 36 years to 89 years, respectively. The youngest College in the approved panel category is NLU, Delhi. The oldest being the National Law School of India University, Bangalore (in short NLSIU). NLSIU was established in 1986 while NLU, Delhi was established in 2008. Similarly, the youngest College in the stand-by-category is, the School of Legal Studies, Cochin University of Science and Technology, Kochi, which was established in 1962 whereas the oldest College in the said category is GLC, Mumbai which was founded in 1855. The position in the "other colleges" category, is no different. The youngest College is Symbiosis, Pune, which was established in 1977 while the oldest is ILS, Pune which was set up in 1924. While the websites of the

Colleges in the approved category are indicative of the fact that they offer a five (5) year Law course, there are at least two Colleges in the stand-by-category, which are GLC and the Faculty of Law, University of Delhi (which was established in 1924) which offer a three (3) year Law course after graduation. Similarly in the "other colleges" category, ILS, Pune offers a three (3) year Law course after completion of graduation.

16.4 By all accounts GLC, Mumbai – which is put in the stand-by-category is, one of the oldest Law Institutes, and has produced some of the doyens in the profession, both off and on the Bench. If a five-year Law course is the common denominator (and I can only hazard a guess in that behalf) for empanelment in the approved category, it is not articulated as a criteria. If it is a criteria then the said criteria is not followed across the board if there are Colleges in the other two categories i.e., stand-by-category and other colleges category which offers a three (3) years Law degree course. These anomalies demonstrate that there are no principles or guidelines in place for empanelment or for benchmarking. Absence of guidelines and benchmarks makes the classification suspect and amenable to challenge under Article 14 of the Constitution.

16.5 In the course of submissions, Mr. Chandhiok had said that empanelment is a voluntary act of the concerned Institute and that as and when an Institute evinces an interest in its empanelment, the applications filed by them are scrutinized and a decision is taken in that behalf by a Committee of Judges.

16.6 This methodology apart from being legally infirm on account of the fact that there is admittedly no advertisement issued has, not been followed consistently. The two examples which have emerged during the course of

arguments, in which respondent no.1 entertained simple letters of request are that of ILS and Symbiosis, Pune (letters dated 24.07.2002 and 05.10.2002, respectively). Pertinently, these letters were not filed by respondent no.1 alongwith the affidavit-in-reply. It is, therefore, not known as to the information adverted to in the said letters. Assuming one were to treat letters as applications and not mere letters of request for empanelment one would expect that they would contain basic information with regard to the attributes of the College which would commend itself for empanelment. In sharp contrast, the letter of request of respondent no.2 dated 17.02.2006 was not considered as an application for empanelment by respondent no.1. In the counter affidavit, it was sought to be explained that in 2007, respondent no.1 through its concerned officer(s) had telephonically informed respondent no.2 that the said Institute had not been placed on the approved panel and therefore, its request for considering its students for engagement as LCRAs could not be entertained. I must point out here that apart from the letter of 17.02.2006, respondent no.2 vide letter dated 16.01.2007 had requested respondent no.1 to engage its students for internship with the Judges of the Supreme Court. What is disconcerting is: as to why no written communication was sent to respondent no.2. It is not even disclosed as to the basis on which the reference is made with respect to the telephonic conversation in paragraph 7 of respondent no1.'s affidavit-in-reply and whether this information is based on the personal knowledge of the deponent or the record of the case available with respondent no.1. If such a record was available, it was not produced before the court.

17. Having said so, the present dispensation clearly offends the equality clause provided in the Constitution. Call it scheme or policy or eligibility

criteria empanelment of Institutes in the present form leads to an invidious classification, which brackets a set of Institutes and consequently its alumni, into privileged category based on indiscernible and unintelligible criteria. If the object sought to be achieved is to render assistance to the Judges of the Court and initiate LCRAs to the judicial system and its processes, it fails on both counts. By keeping a large section of both, meritorious and needy Law graduates out of the fray or zone of consideration, the stated policy, in my view, attains an element of discordance qua its articulated object. When, the purported policy articulates that it wants to ensure that selected LCRAs render assistance to the Judges; I would imagine that the Supreme Court would want to induct the best and the brightest minds and expose them to its workings and complexities, and while doing so, keep room for those who are sociologically and economically deprived, and educationally handicapped, due to absence of requisite facilities in their respective alma maters. The scheme and/or the policy achieves neither.

18. The argument of "trust" and "confidentiality" is equally flawed. There is no basis to even suggest that only applicants from empanelled Colleges would keep trust and confidence of the Judge with whom they are attached. These are qualities which are peculiar to a person. If the argument is that a particular Judge should have say in the engagement or attachment of a particular person with his office, that discretion, is not diluted if applicants, like the petitioner, are given a ***look-in***. The petitioner's plea is of consideration. She does not and cannot claim a right to be selected.

18.1 The argument of trust and confidence is decidedly a weak argument for another reason. Attached to each Judge is defined retinue of court staff, made available to him. To give an example: A Judge's staff would

ordinarily include, amongst others his private secretary, two stenographers, a court master, his usher and restorer. These personnel are constantly in and out of a Judge's chamber. The staff is recruited through a well defined and known criteria. The staff is required to keep the trust and confidence of the Institution, while dealing with official information. A Judge on his appointment to the court is assigned his staff, who are more often and then not, already on the rolls of the institution. There is no particular criteria, in the nature of a pre-requisite in place, which requires (at least none has been shown) that the staff can be assigned to a Judge only if he/ she has his trust or confidence. That is, not to say, that if, there is an infraction, the Judge concerned will not have the authority to trigger an appropriate corrective measure, including having the concerned employee removed from his retinue.

18.2 Having said so, "***trust"*** and "***confidence"*** of a particular Judge cannot form an eligibility criteria for recruitment as, the appointment is an institutional appointment. A similar principle should apply, in my opinion, to engagement of LCRAs as these engagements are ultimately for the benefit of the Institution, that is, the Supreme Court.

19. The submission of Mr Chandhiok that the engagement of LCRAs is not an employment to a civil post or a public office, is well taken. But from this argument it cannot follow that engagement of a LCRA by the Supreme Court does not fall within the realm of public law and hence is not amenable to the writ jurisdiction of the court. Though there is a fine line at times between what falls within the realm of public law as against that which falls within the arena of private law, in the present case, in my view, wherever the line is drawn, the instant case falls within the domain of public law. The

reason for that is: the authority, (i.e., which is the Supreme Court) whose actions are challenged is undoubtedly a State, being one of the three wings of the State, in the large omnibus sense. Its functions have a public character, which character would be applicable to each of its constituents, including the Judges of the court, whether acting singularly or collectively. The terms of engagement of LCRAs require admittedly payment of a stipend/ honorarium, which is paid out of public money, in the form of funds provided by the Government of India through the consolidated fund of India. The right to be considered for engagement as a LCRA by a State authority has thus a public law character. The term public character in contradistinction to private character, perhaps has myriad definitions, each of which would have a contextual meaning. However, if one were to attempt to articulate as to what would be a common denominator, to my mind, it could be said that: A State displays attributes of a public character when it acts in the realm of political firmament, or in its capacity as a sovereign or even in its discharge of constitutional and administrative duties. If I were to apply this measure to the engagement of LCRAs by the Supreme Court, in my view, it would fall in the realm of public character as opposed to private character and hence within the ambit of public law.

19.1 If that be so, the next question would be: would a mandamus lie qua a public authority to enforce a duty which has attributes of public character. To answer this question I need not go further than to derive sustenance from the judgement of the Supreme Court in the case of ***Andi Mukta sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust & Ors. vs. V.R. Rudani & Ors. (1989) 2 SCC 691***. The Supreme Court in this case was dealing with an appeal filed by a private trust, which was

aggrieved by the judgment of the High Court, directing it to pay arrears of salary and other terminal benefits to teachers, who were employed by a College under its management. The Supreme Court, inter alia, was called upon to examine the validity of the submission raised by the appellants before it, that no writ would lie for seeking a mandamus qua the management of the College. The Supreme Court observed that as long as the party against whom mandamus is sought is required to discharge a public duty, mandamus would lie. As a matter of fact, it quoted Lord Denning in what would be the scope of relief that a court could grant in what is termed as the power of judicial review conferred upon the superior Courts in India. It approved Lord Denning's dicta, which inter alia, indicated that both declaratory relief as well as, relief by way of a Writ of Mandamus could be granted. The Supreme Court also went on to approve the observations of Prof. De. Smith to the effect that for a public duty to be enforceable by mandamus, it does not necessarily have to be one imposed by a statute, it would be sufficient if the duty is imposed by either a charter or common law or custom or even a contract. The court, made a pointed observation with regard to the use of the term 'authority' in Article 226 of the Constitution, which it said, should receive a liberal meaning, unlike the term used in Article 12, which is relevant only for the purposes of enforcement of Fundamental Rights under Article 32. The court went on to say that under Article 226, High Courts can issue writs for enforcement of both Fundamental Rights as well as non-Fundamental Rights; therefore, as long as the body against whom writ is sought is performing a public duty, which must be a positive obligation owed by a person or authority to the affected party, a mandamus would lie. This would be irrespective of the

means by which duty is imposed. As long as there is a positive obligation, writ of mandamus cannot be denied. (See paragraphs 15 to 22 at pages 698 to 701 of ***Andi Mukta*** case).

19.2 In the present case, there is no difficulty in coming to the conclusion that respondent no. 1 is a State. Furthermore, I am also of the opinion, in view of the discussion above, that it is discharging a public duty in seeking to engage LCRAs and, in that sense, has created a positive obligation in favour of prospective applicants to consider them for engagement, by a procedure, which is fair, reasonable and non-arbitrary.

20. A submission was made on behalf of respondent no.1 that given the large number of Law Colleges and Universities in India, which according to the figure supplied, is 900, a method of 'shortlisting' had to be employed due to administrative inconvenience and limited funds available to it. In other words, respondent no. 1 seeks to justify creation of a class of empanelled Law Colleges and Universities, *inter alia*, on these grounds, as well.

20.1 The principles pertaining to permissible classification, which is encompassed in Article 14 of the Constitution, are so well enunciated by the Supreme Court, since its establishment, that citing them seems almost, platitudinous. But the application of the principle continues to be tested, as each case on facts, according to the parties involved in the lis, throws up a new dimension. Therefore, it becomes necessary to restate the principle. Classification per se is an anathema. What is permissible under the Constitution is a reasonable classification, which is based on intelligible differentia, which has, in turn, nexus with the object sought to be achieved.

21. In the recent history of the Supreme Court (60 years of judicial history

doesn't seem far away) the journey started with the court being called upon in the case of ***State of West Bengal vs. Anwar Ali Sarkar & Anr. AIR 1952 SC 75*** to examine the constitutional tenability of establishment of special courts under Section 3 of the West Bengal Special Courts Ordinance 1949, which was replaced with West Bengal Special Courts Act, 1950. The intent of the legislation was to confer power on the State Government to refer to a Special Court, for trial, cases, it thought fit required trial by such courts.

21.1 The majority judgment set aside the appeal of the State of West Bengal preferred against the judgment of the Calcutta High Court, which had quashed conviction of the respondents by a Special Court. In a concurring, but a separate judgment, Hon'ble Mr. Justice Vivian Bose (as he then was) made the following illuminating observations with regard to the scope and ambit of Article 14, in particular, as to what constitutes classification and in effect permissible classification. I can only quote with profit some of the observations made, as paraphrasing may perhaps dull the edge of observations made, which are quite often forgotten:

> "....84. What, after all, is classification? It is merely a systematic arrangement of things into groups or classes, usually in accordance with some definite scheme. But the scheme can be anything and the laws which are laid down to govern the grouping must necessarily be arbitrarily selected; also granted the right to select, the classification can be as broad-based as one pleases, or it can be broken down and down until finally just one solitary unit is divided off from the rest. Even those who propound this theory are driven to making qualifications. Thus, it is not enough merely to classify but the classification must not be 'discriminatory', it must not amount to 'hostile action', there must be 'reasonable grounds for distinction', it must be 'rational' and there must be no 'substantial

discrimination'. But what then becomes of the classification? and who are to be the judges of the reasonableness and the substantiality or otherwise of the discrimination? And, much more important, whose standards of reasonableness are to be applied? - the judges? - the government's? - or that of the mythical ordinary reasonable man of law which is no single man but a composite of many men whose reasonableness can be measured and gauged even though he can neither be seen nor heard nor felt? With the utmost respect I cannot see how these vague generalisations serve to clarify the position. To my mind they, do not carry us one whit beyond the original words and are no more satisfactory than saying-that all men are equal before the law and that all shall be equally treated and be given equal protection. The problem is not solved by substituting one generalisation for another.....

...86. I would always be slow to impute want of good faith in these cases. I have no doubt that the motive, except in rare cases, is beyond reproach and were it not for the fact that the Constitution demands equality of treatment these laws would, in my opinion, be valid. But that apart what material have we for delving into the mind of a legislature? It is useless to say that a man shall be judged by his acts, for acts of this kind can spring from good motives as well as bad, and in the absence of other material the presumption must be overwhelmingly in favour of the former.....

..... It is the function of the legislature alone, headed by the government of the day, to determine what is, and what is not, good and proper for the people of the land; and they must be given the widest latitude to exercise their functions within the ambit of their powers, else all progress us barred. But, because of the Constitution, there are limits beyond which they cannot go and even though it fails to the lot of judges to determine where those limits, lie, the basis of their decision cannot be whether the Court thinks the law is for the benefit of the people or

> not. Cases of this type must be decided solely on the basis whether the Constitution forbids it.....
>
> .... I feel therefore that in each case judges must look straight into the heart of things and regard the facts of each case concretely much as a jury would do; and yet, not quite as a jury, for we are considering here a matter of law and not just one of fact; Do these "laws" which have been called in question offend a still greater law before which even they must bow?.....
>
> .... It matters not how lofty and laudable the motives are. The question with which I charge myself is, can fair-minded, reasonable unbiased and resolute men, who are not swayed by emotion or prejudice, regard this with equanimity and call it reasonable, just and fair, regard it as that equal treatment and protection in the defence of liberties which is expected of a sovereign democratic republic, in the condition which obtain in India today?....."
>
> (emphasis is mine)

21.2. The view of Justice Bose and others which were part of the judgment in ***Anwar Ali Sarkar's*** case suffered a slight set back in the case of ***Kathi Raning Rawat vs. State of Saurashtra AIR 1952 SC 123***. To be restated emphatically, in the case of ***E.P. Royappa vs. State of Tamil Nadu & Anr. (1974) 4 SCC 3.*** In that case, the Supreme Court was called to examine the challenge laid by the appellant to the order passed by the State Government of Tamil Nadu, which had resulted in his transfer from the post of Chief Secretary to that of an Officer on Special Duty. The court delivered two separate but concurring judgments. The first judgment was delivered by Chief Justice A.N. Ray for himself as well as Hon'ble Mr. Justice D.G. Palekar, while the second judgment was delivered by Hon'ble Mr. Justice

P.N. Bhagwati on his own behalf and on behalf of Hon'ble Mr. Justice. Y.V. Chandrachud and Hon'ble Mr. Justice V.R. Krishna Iyer (as they then were). Justice Bhagwati, in his own immitable style, stated that Article 14 was the genus, while Article 16 was its species. There was a reference to Article 16, as the issue being considered related to public employment as well, which is an aspect one is not concerned with in the instant case. The observations on Article 14 are though most pertinent.

21.3 The learned Judge appositely went on to observe that when an act is arbitrary, it is implicit in that, it is unequal, both according to political logic and constitutional law, and therefore is violative of Article 14. Article 14 strikes at arbitrariness in State action so as to ensure fairness and equal treatment. Article 14 requires that State action must be based on ***"valid relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality".*** (See paragraph 85 at page 38).

22. The Supreme Court went on to restate the principle in its subsequent judgments in the case of ***Shri Ram Krishna Dalmia & Ors. vs. Shri Justice S.R. Tendolkar & Ors. AIR 1958 SC 538; Maneka Gandhi vs. Union of India & Anr. (1978) 1 SCC 248; I.R. Coelho vs. State of T.N. (2007) 2 SCC 1*** and ***State of Maharashtra and Anr. vs. Indian Hotel & Restaurants Association & Ors. (2013) 8 SCC 519.*** The essence of these judgments is: unless the classification made, is reasonable and non-discriminatory, it cannot sustain the scrutiny of Article 14. Simply put, action of the State in any sphere would be arbitrary, if it is not based on a discernible, valid and relevant principle or guidelines. In the instant case, the classification or shortlisting, which respondent no. 1 claims has been done for administrative

reasons, does not disclose any valid, relevant or discernible principle. I may here only quote with profit the observation made by the Constitution Bench in the case of ***Ram Krishna Dalmia*** in relation to a legislative act:

> "...(f) that while good faith and knowledge of the existing conditions on the part of the legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation...."
>
> (emphasis is mine)

22.1 Pertinently, the aforesaid observation is cited with approval by the Supreme Court in its most recent judgment in the case of ***Indian Hotel & Restaurants Association.***

22.2 Keeping in mind the aforesaid, let me examine the tenability of the latest guidelines relied upon by respondent No.1. The latest guidelines (which are adverted to in paragraph 18 of the affidavit of respondent no.1), while providing for the manner in which applications would be invited from Law graduates of eligible National Law Schools/ Colleges and the mode and manner in which they are processed, does not provide for, an eligibility criteria for empanelment, which is the core grievance of the petitioner herein.

22.3 In this regard, I may also, once again, advert to the annual report of the Supreme Court for the year 2007-08, on which reliance was placed, though filed by the petitioner. A particular emphasis was placed on paragraphs 30 to 32 of the annual report. While paragraph 30 discloses the

fact that Hon'ble the CJI is the Chancellor or visitor of several "reputed institutions", the examples of which are given; paragraph 31 adverts to the fact that law clerks are drawn from "various empanelled National Law Schools and other approved Law Colleges and Universities". There is also a reference to the honorarium (which was Rs.20,000/- at that time) which is paid on engagement, as also, to the various Law Colleges (as empanelled at that time), which fall within the three categories referred to above. Paragraph 32, of the very same report, dilates on the procedure which, inter alia, requires the empanelled Law schools to submit applications and bio-datas of their final year students pursuing a five (5) year Law course. In the said paragraph, it is also indicated that the selection is carried out by a panel of Judges, whereafter a list is prepared. It is also stated that the assignment as LCRA is for short periods, and that, on being engaged the LCRAs, are required to execute an undertaking in the given format. In my opinion, the disclosure in the annual report does not answer the question which has been raised in the present petition, which is, what is the criteria for empanelment of Law Colleges and Universities, and thus, the rationale for confining the field of consideration for engagement of LCRAs to only those who have graduated from the empanelled Law Colleges/ Universities.

22.4 The argument advanced on behalf of respondent no.1 that the empanelled Colleges have not been made parties and hence the writ petition is not maintainable, is according to me, an argument which deserves to be rejected at the very threshold. The reason for this is that, the petitioner has sought a declaration qua the scheme/ policy which has been put in place, which purportedly led to the empanelment of eighteen (18) Colleges. The petitioner has challenged the scheme/ policy of empanelment. For this

purpose the Colleges need not be made parties as the scheme/ policy, if at all, had to be defended by respondent no.1. In granting relief sought for by the petitioner, I have taken care in not disturbing the recruitment of LCRAs under the present dispensation for the year 2013-14. That, respondent no.1 may have to devise a policy which accords with the import of Article 14, is another matter. Therefore, from hereon, much would depend on how respondent no.1 would proceed post the directions issued in this particular case.

22.5 There is yet another argument, which was advanced on behalf of respondent no.1, which was that it is for the authority concerned, (which seeks to recruit persons for the purposes for enabling it to discharge its duties), to decide on the mode of selection and the qualifications required for selecting a suitable candidate. One cannot quibble with this proposition and the case law cited for this purpose on behalf of respondent no.1. What is found fault with is that there is no discernible principle or guidelines based on which respondent no.1 has proceeded to select candidates from only empanelled Law Colleges and Universities. If the argument of respondent no.1 is that sourcing of prospective candidates from the empanelled Colleges is itself a qualification criteria; it is a submission, which would have to be rejected. There can be no difficulty in respondent no.1 providing minimum qualification for recruitment of prospective applicants; as long as empanelment is not confined to few selected Law Colleges and Universities, without disclosing the relevant parameter or benchmark necessary, for achieving empanelment. Therefore, this argument, in my opinion, is misconceived and hence rejected.

22.6 The other argument advanced on behalf of respondent no.1 is that, no

fault could be found with empanelment of limited number of Colleges from amongst 900 Law Colleges, which had been recognized by the Bar Council of India, as it was in effect a method employed to prune the best Law Colleges/ Universities from a whole range of Law Colleges, which were recognized by Bar Council of India.

22.6(i) This argument would have had some merit, if in reducing the catchment area to a manageable number, respondent no.1 had employed discernible and valid principle or guidelines. Administrative convenience simpliciter cannot trump the mandate of Article 14.

CASES CITED BY RESPONDENT NO.1

23. Before I conclude I must briefly deal with the cases referred to on behalf of respondent no.1. The judgment in the case of ***Secretary, A.P. Public Service Commission vs. B. Swapna and Ors.*** relates to the power of the A.P. Public Service Commission, to recruit persons vis-a-vis 'fallout' vacancies, without taking recourse to the waiting list / ranking list. Both the administrative tribunal as well as the High Court had accorded relief to the respondents by taking recourse to the amended Rule. The Supreme Court, found fault with this approach. The Supreme Court, was of the view that regard ought to have been made to the unamended Rule, which was applicable to the case. Under the unamended Rule, A.P. Public Service Commission had the power to freeze the waiting list, and thus, had the power not to take recourse to the waiting list in recruiting the candidates.

24. It is not understood as to how this judgment would apply to the facts of this case. The observations of the Supreme Court in paragraph 14 on which reliance was placed by the counsel for respondent no.1 that once the

process of selection is started, the prescribed criteria cannot be changed, in my view, would have no application in the present case as this is a case where there is no prescribed criteria in place for empanelment of Law Colleges / Universities.

25. In so far as the judgment in the case of ***Directorate of Film Festivals and Ors. vs. Gaurav Ashwin Jain and Ors.*** is concerned, it is also distinguishable for the following reasons :-

25.1 This was a case where the respondents had succeeded in the High Court. The High Court had found fault with the eligibility criteria requirements put in place by appellant no.1 for entering films in the non-feature film category, for award of National Film Awards. The first eligibility condition required that film entered should have been certified by the Central Board of Film Certification (in short the Board). The second condition, required that the film entered should have been released in the film 'celluloid' format.

25.2 Before the Supreme Court, the second eligibility condition was given up by the appellants and therefore, it was called upon to examine the tenability of only the first eligibility condition. The argument before the Supreme Court proceeded on the basis that films made by Doordarshan and other film Institutes did not require certification by the Board before they were entered for consideration of the National Film Awards and therefore, there was a case of discrimination.

25.3 There was an additional submission advanced on behalf of the respondents which was that, the Ministry of Information and Broadcasting permitted entry of films in "Film Festivals" (non-commercial section), without certification by the Board.

25.4 The Supreme Court based on its analysis of the provisions of the Cinematograph Act, 1952 came to the conclusion that it was a policy decision of the Government to permit entry of films for the purposes of National Film Awards, to only those, which had been certified by the Board for exhibition. In other words, films which could be publically exhibited. The Supreme Court, was of the view that the object of the National Film Awards was to encourage production of films which had high aesthetic value and technical quality coupled with social relevance, so as to be able to contribute to the understanding and appreciation of cultures of different regions of the country and also be instrumental in promoting national integration and unity.

25.5 The Supreme Court found no irrationality in the Government formulating a policy to select best films from amongst those which were made and certified for public exhibition as against those, which were generally made, without having the requisite certification.

25.6 As is evident, the requirement of certification of films was based on the provisions of a statutory act, which invested in the Government the power to exempt certain entities from the provisions of the Act. The classification in this case was based on a criteria which was intelligible and had a nexus with the object sought to be achieved. The object was to have certified films put in public domain, so as to meet socially relevant goals. In this case, the classification is neither based on intelligible criteria nor has a nexus with the stated object.

26. The next judgment cited on behalf of respondent no.1 is ***Chandigarh Administration through the Director Public Instructions (Colleges), Chandigarh vs. Usha Kheterpal Waie & Ors.*** This was a case where the

Supreme Court was called upon to examine the tenability of the eligibility condition provided in an advertisement issued by the appellant before it i.e., Chandigarh Administration with regard to the recruitment of candidates for filling up the vacancies in the post of Principal, in the Colleges under its purview. The eligibility criteria apparently was that only those lecturers could be considered for appointment to the post of principal who, inter alia, possessed a Ph.D. degree. Evidently, this condition was inserted based on draft rules which had not been notified by the Central Government at the stage at which the advertisement was issued. The Supreme Court, upheld the condition contained in the advertisement, based on its own precedent, which held that, administrative decisions taken to make promotions based on draft rules, which are in the process of being finalized, are valid decisions. The court also sustained the condition in the advertisement on the ground that the Executive had necessary power to issue administrative instructions in respect of the matters which are not governed by the statute or rules. Therefore, the reliance on this judgment is totally misconceived. This was a case in which eligibility conditions were provided, the challenge was to the stage, at which, eligibility conditions had been inserted.

27. The next judgment cited on behalf of respondent no.1 i.e., ***Sanchit Bansal and Anr. vs. Joint Admission Board and Ors.,*** is also, distinguishable on facts. In that case, the Supreme Court upheld the evaluation procedure which gave weight to cut off marks secured by an applicant in individual marks over and above the aggregate marks secured by an applicant. The appellant no.1 before the Supreme Court had secured an aggregate of 231 marks in mathematics, physics and chemistry. The appellant no.1 had failed to secure the minimum cut off marks in chemistry,

which were 55. The respondent no.1/Board had fixed minimum cut off marks in chemistry as 55. Since, the appellant no.1, had secured only 52 marks in chemistry, he did not qualify for admission and hence the challenge. It is in this context that the Supreme Court declined to interfere with the evaluation criteria fixed by the respondent no.1/Board. The facts obtaining in that case are clearly distinguishable.

28. The judgment in the case of ***State of U.P. and Ors. vs. U.P. State Law Officers Association and Ors.,*** would also, not help the cause of respondent no.1 in view of the fact that the Supreme Court in that case was considering the legal validity of the judgment of the High Court of Allahabad , whereby the order passed by the State of UP removing 26 out of 64 Law Officers was set aside by the High Court. The court noted that since the respondents were beneficiaries of a "spoils system" and, given the fact that, their contracts had already come to an end, the direction issued by the High Court to continue their appointment could not sustain. What is interesting is the observation of the Supreme Court in paragraph 19 which, in no uncertain terms, highlights the fact that appointments of Government counsels should ordinarily be made on merit alone and that in the absence of guidelines the appointments may be made purely on personal or political considerations and, consequently, be arbitrary. The court went on to say therefore, those who were appointed by an arbitrary procedure cannot complain if the termination of their appointment is equally arbitrary. The facts in the said case clearly revealed that it can have no applicability to the instant case.

29. The case cited on behalf of respondent no.1. i.e., ***State of U.P. and Anr. vs. Johri Mal*** is related to renewal of term of district Government counsels. In this context, the provisions of Section 24 of the Code of

Criminal Procedure, 1973 (in short the Code) and the relevant provisions of the Legal Remembrancer's Manual were considered by the Supreme Court. The Supreme Court ruled that the court could issue a mandamus where the petitioner establishes enforceable legal right in himself which corresponds with the legal duty in public authorities. One cannot quibble with the principle. The scope of judicial review is also well known. Whether a particular case would fall within the realm of a court exercising writ jurisdiction under Article 226 of the Constitution would obviously depend on the facts of each case. The facts of ***Johri Mal***'s case in my view are clearly distinguishable. Even in the said case, the Supreme Court having regard to the provisions of the Code came to the conclusion that provisions of Article 14 would be applicable, though to a limited extent as the persons named therein were public functionaries**.** Though, there was no concept of public office, having come into play in the matter of engagement of district Government counsel, the Supreme Court observed that if, the State were to fail in the discharge of its public duty or act in defiance, deviation or departure of principles of law, the court could interfere.

29.1 In my view, the said judgment turns on its own peculiar facts.

30. The rationale of the judgment of the Supreme Court in the case of ***State of Uttar Pradesh and Ors. vs. Rakesh Kumar Keshari and Anr.*** is more or less similar which again dealt with appointment or renewal of contracts of Government counsels / pleaders.

31. In the case of ***Vinay Balachandra Joshi vs. Registrar General, Supreme Court of India and Anr.*** the Supreme Court was called upon to deal with the issue of allotment of chambers to the members of the Supreme Court Bar Association. In this context, the rules framed by then Hon'ble

the CJI for allotment of chambers of lawyers falling in the category of advocates-on-record, non advocates-on-record and senior advocates, were examined. In the instant case, we are faced with a situation where there are no guidelines, rules or criteria in place. In my view, this judgment is distinguishable, once again, on facts.

32. Lastly, on behalf of respondent no.1 two judgments were cited which dealt with the issue pertaining to the policy formulated by the Government of India whereby, public sector enterprises were allowed recruitment of management trainees by taking recourse to the methodology of on campus interviews.

32.1 The first judgment cited in this behalf was that of the Division Bench of the Kerala High Court in the case of ***Federation of Central Government SC/ST Employees vs. Kochi Refineries Ltd.***

32.2 The second judgment was of a single Judge of the Madras High Court in the case titled : ***Chennai Petroleum Employee's Union vs. The General Manager, H.R. Petroleum Corporation Ltd.,*** which merely followed the judgment of the Division Bench of the Kerala High Court.

32.3 The challenge to the Government policy which was contained in office memorandum dated 29.05.2000 was raised in both cases by the employees' union. There was no challenge by a prospective candidate with regard to the policy of direct recruitment from certain specific Institutions.

32.4 The other distinguishing feature was, the argument of the petitioner that the recruitment rules were being given a go-by. The Division Bench of the Kerala High Court came to the conclusion that when State involved itself in business or in commercial ventures where competition was keen, novel methods could be adopted to keep ahead in the race, bearing in mind,

national interest. Therefore, the Kerala High Court found no fault with recruitment being made by on campus interviews.

32.5 In the other case which was decided by the learned single Judge of the Madras High Court it was noticed that the petitioner union had entered into a settlement under Section 18(1) of the Industrial Disputes Act, 1947 qua promotions of its members, and therefore, the methodology of on campus interviews for direct recruitment could not be found fault with.

32.6 What is clear, is that, in both cases persons employed through direct recruitment through the methodology of on campus interviews did not directly impinge upon the interest of employees who were already in harness whereas in the present case, the policy / scheme which has been put in place has resulted in exclusion of the petitioner from consideration for engagement as a LCRA at the very threshold. Thus, in my view, the ratio of these two judgments will have to be read in the background of the facts arising in the said cases.

32.7 It may perhaps be of some miniscule relevance, that the Supreme Court in the ***Federation of Central Government SC/ST Employees, Kochi Refineries & Ors. vs. Kochi Refineries Ltd.***, has granted leave to appeal in SLP (C) No.17538/2005 vide order dated 14.09.2007.

33. The petitioner, in effect, is asking for a look-in or consideration of her ability to fulfil the role of a LCRA. Denial of such an opportunity by respondent no.1, by taking recourse to the present dispensation, is in my view, manifestly unjust. The scheme/ policy/ eligibility criteria is both discriminatory and arbitrary, and thus, violative of the equality clause engrafted in Article 14 of the Constitution. Characteristically, a Constitution Bench of the Supreme Court in the context of promotions in Government

service has ruled that the right to be considered for promotion according to relevant rules is a Fundamental Right and not just a statutory right. [see ***Ajit Singh & Ors. (II) vs. State of Punjab & Ors. (1999) 7 SCC 209*** (at paragraphs 22 and 27 at pages 227 and 228, respectively)]. Though, engagement as a LCRA is not an employment to a civil post, nevertheless, the right to be considered will, in my view, be an enforceable right qua an organ of the state such as the Supreme Court.

33.1 On behalf of respondent no.1, an attempt was made to defend the scheme / policy presently in place by relying upon the mechanism in place in the Punjab and Haryana High Court. I have consciously chosen not to discuss the schemes / policies for engagement of LCRAs which is prevalent in other High Courts for two reasons. First, in the present matter the schemes / policies of those High Courts are not under consideration or challenge. Second, the petitioner has cited examples of various High Courts where empanelment of select Law Colleges / Universities is not the route followed, while considering applicants for engagement as LCRAs. Therefore, mindful of this situation, I have chosen to only concentrate on the scheme / policy formulated by the Supreme Court.

33.2 Therefore, I have no hesitation in declaring that the scheme/ policy, as formulated, is unconstitutional. This is not to say, that respondent no.1 cannot devise a scheme/policy. It is undoubtedly empowered to design a policy which is fair and equitable, and that, which enables every aspirant to be considered for engagement as a LCRA. Necessarily, the mode and manner of sifting the source would have to be devised by respondent no.1. Therefore, to the extent the present scheme/policy confines the source of candidates, for engagement as LCRAs, to the empanelled Law Colleges and

Universities; it is illegal. That said the concerned Judge with whom a LCRA is to be attached will ultimately have a say in the matter. The concerned Judge would necessarily have a pool of eligible LCRAs available with him / her from which he / she could choose a particular LCRA for attachment.

34. The fact that respondent no. 1 has already undertaken the exercise for the year 2013-14 cannot be denied, and therefore, there can be no reversal of the process, which has already crystalized. The reason for the same is two-fold. First, it would unnecessarily upset the working of the court, which cannot be in public interest. Second, it would affect the interest of those applicants, who have been appointed as LCRAs.

35. This brings me to the next limb of the petitioner's prayer, as to whether a mandamus should issue to respondent no.1 to accept and consider the petitioner's application for engagement as a LCRA for the remaining term which ends in summer of 2014. Having held that sourcing of candidates only from empanelled Law Colleges and Universities, is illegal, the next logical step would be to direct respondent no.1 to consider the petitioner's application for engagement as a LCRA, notwithstanding the fact that respondent no.2 is not on the panel maintained by respondent no.1, and that, the petitioner's application is not sponsored by respondent no.2. It is directed accordingly. Respondent no.1, shall consider the application of the petitioner for engagement as a LCRA, for at least, the remaining term.

36. In view of the foregoing reasons, the writ petition is allowed in the above terms. Consequently, no orders are called for in the captioned interlocutory application. Accordingly, CM No.739/2013 is also disposed of

in the above terms. The parties are, however, directed to bear their own costs.

RAJIV SHAKDHER, J.

DECEMBER 16, 2013
kk/yg