

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 13 OF 2015

Supreme Court Advocates-on-Record
Association and Another

....Petitioners

versus

Union of India

...Respondent

WITH

WRIT PETITION (C) NO. 14 OF 2015	WRIT PETITION (C) NO. 18 OF 2015
WRIT PETITION (C) NO. 23 OF 2015	TRANSFER PETITION (C) NO.24 OF 2015
WRIT PETITION (C) NO. 70 OF 2015	WRIT PETITION (C) NO. 83 OF 2015
WRIT PETITION (C) NO. 108 OF 2015	WRIT PETITION (C) NO. 124 OF 2015
WRIT PETITION (C) NO. 209 OF 2015	WRIT PETITION (C) NO. 309 OF 2015
WRIT PETITION (C) NO. 310 OF 2015	WRIT PETITION (C) NO. 323 OF 2015
WRIT PETITION (C) NO. 341 OF 2015	TRANSFER PETITION (C) NO. 391 OF 2015
TRANSFER PETITION (C) NO. 971 OF 2015	

ORDER

1. The adjudication on the merits of the controversy, raised in this batch of

cases, was rendered on 16th October, 2015, wherein a separate “Order of the Court” was also recorded. In paragraph 5 of the Order of the Court, it was decided to consider the incorporation of additional appropriate measures, if any, for an improved working of the “collegium system”. For the above purpose, hearing was fixed for (and commenced on) 3rd November, 2015. Mr. Mukul Rohatgi, learned Attorney General for India, preferred written suggestions and supplemented them with oral submissions. Likewise, other learned senior counsel were also heard and they too presented their views. Submissions were advanced freely, solely with the objective of introducing measures in the prevailing “collegium system” of appointment of Judges to the higher judiciary, which in the perception of the concerned learned counsel, would improve the working of the system.

2. From the first hearing itself, it emerged that the suggestions were on diverse issues. A few suggestions, though honestly and meaningfully expressed, contained diametrically opposite recommendations. It was therefore felt that the suggestions received should be compiled in an orderly manner so as to enable all concerned stakeholders to have a bird’s eye view of the same, thereby possibly making the debate thereon more judicious. Accordingly, on the nomination by the learned Attorney General, of Mrs. Pinki Anand, Additional Solicitor General, and on the unanimous endorsement of all the learned counsel representing the petitioners, of Mr. Arvind P. Datar, Senior Advocate, a two-member committee was constituted. The committee was requested to make a

compilation of the suggestions received upto 4th November, 2015. The above committee presented the compilation on 5th November, 2015.

3. After hearing the Chairman of the Bar Council of India and learned counsel some of whom had travelled from distant States, it was felt that a further opportunity should be afforded to the stakeholders to furnish their valuable contributions on the matter. It is therefore, that the following order came to be passed on 5th November, 2015:

“Mrs. Pinky Anand, learned Additional Solicitor General, and Mr. Arvind Datar, learned Senior Advocate have made a compilation of suggestions received up to 23.45 hours on 4.11.2015, in furtherance of our motion Bench order dated 3.11.2015. A large number of learned counsel have even today prayed for further time to make suggestions. They have also requested for time on behalf of private individuals for the same purpose.

The Chairman of the Bar Council of India has also made a prayer, that the Bar Council of India which is the apex body of all the State Bar Councils, be permitted to gather suggestions from all stake holders, and submit such of the suggestions as it approves, for consideration by this Court.

The learned Attorney General for India has volunteered to facilitate the prayer made by the learned counsel, by web-hosting the compilation made by the Additional Solicitor General and the learned Senior Counsel referred to above, on the web site of the Department of Justice, Ministry of Law and Justice, New Delhi, and also, to issue a public notice in the media seeking suggestions from all those who may desire to make contribution by 17.00 hours on 13.11.2015 (up to 14.11.2015 by the Bar Council of India). Suggestions may be made in the four categories, i.e., Transparency, Collegium Secretariat, Eligibility Criteria and Complaints.

We appreciate the efforts made by the learned Attorney General for India. He may web-host the compilation and issue a WP(C)No.13/15 etc.etc. 8 public notice. Likewise, all those who desire to make suggestions may do so directly, on the website of the Department of Justice, Ministry of Law & Justice, New Delhi. Suggestions received by 17.00 hours on 13.11.2015 shall be entertained. No further suggestions will be entertained. All such suggestions will be forwarded by the Department of Justice to the learned counsel who had assisted this Court in the previous compilation, for

incorporating additional suggestions in the earlier compilation, for consideration.

List on 18.11.2015 for hearing. Hearing shall be limited to two days and will conclude on 19.11.2015. Hearing shall be limited to such of the counsel who are short-listed and allowed time by a Committee comprising of learned Attorney General for India, the Chairman, Bar Council of India, and Mr. Fali S. Nariman, learned Senior Advocate. No other counsel shall be heard.”

4. During the resumed hearing, all those who desired to address the Court were afforded an opportunity of being heard. After all, this assistance to the Bench was being rendered *pro bono publico*, in the interest of the judiciary as an institution, as well as for and on behalf of all stakeholders.
5. It is important to note that the compilation of the written suggestions placed before us was in the nature of a summary prepared out of approximately 11,500 pages of views expressed. We had a very challenging responsibility to embark upon and reflect, and thereafter, to sieve such of the suggestions as were likely to improve the “collegium system”. Only then would we be in a position to sponsor their introduction into the Memorandum of Procedure for the appointment of Judges of the higher judiciary.
6. Even though the task seemed to be daunting, we felt obliged to take up the responsibility, as it was after all, for an improvement of the judicial system and such an opportunity must not be lost. It was at this stage of our reflection, that the learned Attorney General made an impassioned submission, not in any obstructive manner, but as a matter of faithful assistance, suggesting that we should desist from pursuing the contemplated course of action. In this behalf it

was pointed out, that the formulation of the Memorandum of Procedure was an administrative responsibility which fell in the executive domain. It was submitted that this Court neither had the expertise nor the wherewithal for proposing amendments in the existing Memorandum of Procedure (drawn on 30th June, 1999 by the Government of India), for improving the collegium system. The learned Attorney General in his submission candidly invited our attention to the following observations recorded in paragraph 478 of the *Second Judges case*¹:

“478.(13) On initiation of the proposal by the Chief Justice of India or the Chief Justice of the High Court, as the case may be, copies thereof should be sent simultaneously to all the other constitutional functionaries involved. Within the period of six weeks from receipt of the same, the other functionaries must convey their opinion to the Chief Justice of India. In case any such functionary disagrees, it should convey its disagreement within that period to the others. The others, if they change their earlier opinion, must, within a further period of six weeks, so convey it to the Chief Justice of India. The Chief Justice of India would then form his final opinion and convey it to the President within four weeks, for final action to be taken. It is appropriate that a memorandum of procedure be issued by the Government of India to this effect, after consulting the Chief Justice of India, and with the modifications, if any, suggested by the Chief Justice of India to effectuate the purpose.”

JUDGMENT

(emphasis supplied)

It was submitted that even the nine-Judge Bench had left the task of drawing up the Memorandum of Procedure to the Government of India.

7. It was the further submission of the learned Attorney General that the views expressed by this Court, while disposing of the main controversy would enable the Government of India, to introduce amendments and to redraw the

¹ Supreme Court Advocates-on-Record Association v. Union of India, (1993) 4 SCC 441

existing Memorandum of Procedure with the object of considering the criteria/benchmark for the appointment of Judges of the higher Judiciary, including widening the zone of consideration; to introduce transparency in the matter of appointment of Judges to the higher judiciary, as would be appropriate, keeping in mind the sensitivity of the issue; to make the present procedure broad based, by introducing supporting measures, whereby candidates can be screened and evaluated, and complaints against them are evaluated through a Secretariat constituted for the said purpose, under the control of the Chief Justice of India, as supplemental (and not as a substitute) to the process contemplated through the *Second Judges case* and the *Third Judges case*² as well as our judgment on merits in the present batch of cases.

8. We may also record, that the introduction of the above changes referred to in the preceding paragraph, are broadly in tune with the majority of the suggestions. These were also referred to by us by the committee under the category of “transparency”, “secretariat”, “eligibility criteria” and “complaints”, in our order dated 5th November, 2015.

9. During the course of hearing, we were also informed by the learned Attorney General, that the Memorandum of Procedure and introducing amendments therein, had always been prepared by the Government of India in consultation with the President of India and the Chief Justice of India. This practice, we were informed, had been consistently adopted, in consonance with

² Special Reference No. 1 of 1998, (1998) 7 SCC 739

the directions contained in paragraph 478 of the *Second Judges case*. In order to allay any fear that may be entertained by any of the stakeholders, it was submitted that the same procedure would be adopted now, if the task was entrusted to the executive. We are in complete agreement with the suggestion of the learned Attorney General.

10. In view of the above, the Government of India may finalize the existing Memorandum of Procedure by supplementing it in consultation with the Chief Justice of India. The Chief Justice of India will take a decision based on the unanimous view of the collegium comprising the four seniormost puisne Judges of the Supreme Court. They shall take the following factors into consideration:

Eligibility criteria

The Memorandum of Procedure may indicate the eligibility criteria, such as the minimum age, for the guidance of the collegium (both at the level of the High Court and the Supreme Court) for appointment of Judges, after inviting and taking into consideration the views of the State Government and the Government of India (as the case may be) from time to time.

Transparency in the appointment process

The eligibility criteria and the procedure as detailed in the Memorandum of Procedure for the appointment of Judges ought to be made available on the website of the Court concerned and on the website of the Department of Justice of the Government of India. The Memorandum of Procedure may provide for an appropriate procedure for minuting the discussions including recording the

dissenting opinion of the Judges in the collegium while making provision for the confidentiality of the minutes consistent with the requirement of transparency in the system of appointment of Judges.

Secretariat

In the interest of better management of the system of appointment of Judges, the Memorandum of Procedure may provide for the establishment of a Secretariat for each High Court and the Supreme Court and prescribe its functions, duties and responsibilities.

Complaints

The Memorandum of Procedure may provide for an appropriate mechanism and procedure for dealing with complaints against anyone who is being considered for appointment as a Judge.

Miscellaneous

The Memorandum of Procedure may provide for any other matter considered appropriate for ensuring transparency and accountability including interaction with the recommendee(s) by the collegium of the Supreme Court, without sacrificing the confidentiality of the appointment process.

11. It is made clear that the guidelines mentioned above are only broad suggestions for consideration and supplementing the Memorandum of Procedure for the faithful implementation of the principles laid down in the *Second Judges case* and the *Third Judges case*.

12. In view of the above, all matters having been collectively heard, are disposed of.

.....J
(Jagdish Singh Khehar)

.....J
(J. Chelameswar)

.....J
(Madan B. Lokur)

.....J
(Kurian Joseph)

.....J
(Adarsh Kumar Goel)

New Delhi;
December 16, 2015



JUDGMENT

ITEM NO.1A

COURT NO.3

SECTION X, XVIA, PIL

IN THE SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Writ Petition(s) (Civil) No(s).13/2015

SUPREME COURT ADVOCATES-ON-RECORD ASSOCIATION AND ANR.

Petitioner(s)

VERSUS

UNION OF INDIA

Respondent(s)

WITH

W.P. (C) No.23/2015
W.P. (C) No.70/2015
W.P. (C) No.83/2015
T.P. (C) No.391/2015
W.P. (C) No.108/2015
W.P. (C) No.124/2015
W.P. (C) No.309/2015
W.P. (C) No.310/2015
W.P. (C) No.323/2015
T.P. (C) No.971/2015
W.P. (C) No.341/2015
W.P. (C) No.14/2015
W.P. (C) No.18/2015
W.P. (C) No.24/2015
W.P. (C) No.209/2015

[HEARD BY: HON'BLE JAGDISH SINGH KHEHAR, HON'BLE J. CHELAMESWAR,
HON'BLE MADAN B. LOKUR, HON'BLE KURIAN JOSEPH AND HON'BLE ADARSH
KUMAR GOEL, JJ.]

JUDGMENT

Date : 16/12/2015 These petitions were called on for
pronouncement of Orders today.

For Petitioner(s) Mr. Surya Kant, Adv.

In WP 13/2015 Mr. Dushyant Parashazr, Adv.
Mr. Pranav Vyas, Adv.

For Petitioner(s) Mr. Dinesh Kumar Garg, AOR

In WP 23/2015

For Petitioner(s) Mr. Santosh Paul, Adv.

In WP 70/2015 Mr. Joseph Aristotle S., Adv.

For Petitioner(s) Mr. Prashant Bhushan, AOR
In WP 83/2015

For Petitioner(s) Mr. Anil B.Divan, Sr. Adv.
In WP 108/2015 Mr.Prashant Kumar, Adv.
Ms.Anindita Pujari, Adv.
Mr. Syed Rehan, Adv.
Mr.Ranvir Singh, Adv.
Mr.Jitendra Kr.Mohapatra, Adv.

For Petitioner(s) Mr. Rabin Majumder, AOR
in WP 124/2015

Mr. Ramesh Babu M.R., AOR

For Petitioner(s) Mr. P.M.Duraiswamy, in person(NP)
in WP 309/2015

For Petitioner(s) Mr. Subhasish Bhowmick, AOR
in WP 310/2015

For Petitioner(s) Mr.Rabin Majumder, AOR
in WP 323/2015

In TP(C) 971/15 Ms.Prachi Bajpai, Adv.

In WP(C) 341/15 Mr.Ankur S.Kulkarni, AOR

For Petitioner(s) Mr. Manohar Lal Sharma, in person (NP)
in WP 14/2015

For Petitioner(s) Mr. R.K. Kapoor, in person(NP)
in WP 18/2015

For Petitioner(s) Mr. Bishwajit Bhattacharyya, in person(NP)
in WP 24/2015

For Petitioner(s) Mr. Rajiv Daiya, in person(NP)
in WP 209/2015

For Respondent(s) Mr. P.S. Narasimha, ASG
(UOI) Ms. V. Mohana, Sr. Adv.
and for Mrs. Devanashi P, Adv.

petitioners Mr.Nikhil Rohatgi, Adv.
In TP 391/2015 Mr.Sameer Rohatgi, Adv.
Mr.D.L.Chidananda, Adv.
Mr.Samit Khosla, Adv.
Mr. B.V. Balaram Das, AOR

For SCBA Mr. Devashish Bharuka, AOR

For State of Raj. Mr.Shiv Mangal Sharma, AAG
for Ms.Ruchi Kohli, AOR

For State of Mr.Tapesh Kr.Singh, Adv.
Jharkhand Mr.Mohd.Waquas, Adv.
Mr.Shashank Singh, Adv.

For State of Mr.C.D.Singh, AAG
Chhattisgarh Mr.A.P.Mayee, Adv.
Mr. Apoorv Kurup, Adv.
Mr. Rohit Rathi, Adv.
Mr. A. Selvin Raja, Adv.

In I.A.No.7/15 Mr.Arvind P.Datar, Sr.Adv.
In WP(C)13/15 Mr. Gautam Narayan, Adv.

For State of Mr.Sapam Biswajit Meitei, Adv.
Manipur Mr.Ashok Kumar Singh, Adv.

For State of Mr.Sanjay Kr.Visen, AOR
Haryana

For State of MP Mr. Mishra Saurabh, AOR

For State of H.P. Mr.Suryanarayana Singh, AAG
Ms.Pragati Neekhra, Adv.

For Govt. of Mr.V.G.Pragasam, AOR
Puducherry

For State of U.P. Mr. Gaurav Bhatia, AAG
Mr.Utkarsh Jaiswal, Adv.
Mr. Som Raj Choudhary, Adv.
for Mr.Abhisht Kumar, AOR

for BCI Mr. Manan Kumar Mishra, Sr. Adv.
Ms. Anjul Dwivedi, Adv.

For Andaman & Nicobar Admn. Mr.K.V.Jagdishvaran, Adv.
Mrs.G.Indira, AOR

For State of Gujarat Ms.Hemantika Wahi, AOR

For State of Punjab Mr.Jagjit Singh Chhabra, Adv.
Mr.Gaurav Yadava, Adv.
for Mr. Kuldip Singh, AOR

For State of Tamil Nadu Mr.M.Yogesh Kanna, AOR
Mr. Jayant Patel, Adv.

For State of Tripura Mr.Ritu Raj Biswas, Adv.
Mr. Shreyas Jain, Adv.
for Mr.Gopal Singh, AOR

For State of Maharashtra Mr.Nishant R Kanteshwarkar, AOR

For State of Uttarakhand Ms.Rachna Srivastava, AOR

For State of Sikkim Ms.Aruna Mathur, Adv.
Mr.Avneesh Arputham, Adv.
Ms.Anuradha Arputham, Adv.
Mr.Yusuf, Adv.
Mr. Shobhit Nanda, Adv.

For State of Nagaland Mrs.K.Enatoli Sema, Adv.
Mr.Edward Belho, Adv.
Mr.Amit Kumar Singh, Adv.

For State of Bihar Mr. Shreyas Jain, Adv.
for Mr. Gopal Singh, AOR

Mr. Gautam Talukdar, AOR

Mr. Varun Thakur, Adv.
for Mr. Varinder Kr. Sharma, AOR

Mr. Subo Sankar Mishra, AOR
Mr. Niranjan Sahu, Adv.

Hon'ble Mr. Justice Jagdish Singh Khehar pronounced the Order of the Bench comprising His Lordship, Hon'ble Mr. Justice J. Chelameswar, Hon'ble Mr. Justice Madan B. Lokur, Hon'ble Mr. Justice Kurian Joseph and Hon'ble Mr. Justice Adarsh Kumar Goel.

For the reasons mentioned in the Reportable Order, which is placed on the file, the Court while disposing of all the matters collectively heard, directed as under:

9. During the course of hearing, we were also informed by the learned Attorney General, that the Memorandum of Procedure and introducing amendments therein, had always been prepared by the Government of India in consultation with the President of India and the Chief Justice of India. This practice, we were informed, had been consistently adopted, in consonance with the directions contained in paragraph 478 of the *Second Judges case*. In order to allay any fear that may be entertained by any of the stakeholders, it was submitted that the same procedure would be adopted now, if the task was entrusted to the executive. We are in complete agreement with the suggestion of the learned Attorney General.

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(Renuka Sadana)
Court Master

(Parveen Kr. Chawla)
AR-cum-PS

JUDGMENT