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SURAZ INDIA TRUST

v.

UNION OF INDIA AND ANR.

(Writ Petition (C) No. 204 of 2010)

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APRIL 4, 2011

[DEEPAK VERMA AND DR. B.S. CHAUHAN, JJ.]

Constitution of India, 1950:

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Article 124(2) – Appointment of Supreme Court and High court Judges – Writ petition – The petitioner sought review of a judgment by nine Judges' Bench of Supreme Court whereby the Court declared the primacy of the collegium in the matter of appointment of the Judges of the Supreme Court and the High Courts – The plea of petitioner was that by the judicial verdicts in the two cases, Article 124(2) was practically amended, although amendment to the Constitution could only be done by Parliament in accordance with the procedure laid down in Article 368 of the Constitution – Held: Even at the stage of preliminary hearing for admission of the petition, the matter is required to be heard by a larger Bench as this matter was earlier dealt with by a three Judges Bench and involved very complicated legal issues – Matter placed before the Hon'ble Chief Justice for appropriate directions.

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Advocate on Record Association v. Union of India & Ors. (1993) 4 SCC 441; Special Reference No.1 of 1998 (1998) 7 SCC 739; Coir Board Ernakulam & Anr. v. Indira Devai P.S. & Ors. (2000) 1 SCC 224; Bangalore Water Supply & Sewerage Board v. A Rajappa (1978) 2 SCC 213; Pradip Chandra Parija & Ors. v. Pramod Chandra Patnaik & Ors. AIR 2002 SC 296; Union of India & Anr. v. Hansoli Devi (2002) 7 SCC 273; B.P. Singhal v. Union of India & Anr. (2010) 6 SCC 331 – referred to.

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Case Law Reference:

(1993) 4 SCC 441	referred to	Para 1	A
(1998) 7 SCC 739	referred to	Para 1	
(2000) 1 SCC 224	referred to	Para 8	B
(1978) 2 SCC 213	referred to	Para 8	
AIR 2002 SC 296	referred to	Para 9	
(2002) 7 SCC 273	referred to	Para 10	C
(2010) 6 SCC 331	referred to	Para 11	

CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil) No. 204 of 2010.

Under Article 32 of the Constitution of India.

G.E. Vahanvati, A.G., A.K. Ganguli, (A.C.), Bharat Sangal (A.C) R.R. Kumar Suraj Daiya (Petitioner-In-Person) for the appearing parties.

The following order of the Court was delivered

O R D E R

1. This writ petition has been filed under Article 32 of the Constitution by the present petitioner claiming itself to be the registered Trust under the provisions of Rajasthan Public Trust Act, 1959. It has been established in the legal arena for the larger public interest. The Trust's motto is to challenge those provisions of law which are ultra vires and unconstitutional. Basically the petitioner has sought the review of the judgment by nine Judges' Bench of this Court in *Advocate on Record Association v. Union of India & Ors.*, (1993) 4 SCC 441; so also in the case of Special Reference No.1 of 1998 (reported in (1998) 7 SCC 739), whereby this Court declared the primacy of the collegium in the matter of appointment of the Judges of the Supreme Court and the High Courts.

A 2. As Mr. Rajiv Daiya, Chairman of the Trust appeared in person and was not able to render any assistance to the Court, thus, we requested Mr A.K. Ganguli, learned Senior counsel alongwith Mr. Bharat Sangal to assist the Court as amicus curiae. The petition raises large number of complicated issues.

B Meanwhile, we also sought assistance of the learned Attorney General for India.

3. Shri A.K. Ganguly, learned senior Advocate, has submitted:

C That the method of appointment of a Supreme Court Judge is mentioned in Article 124(2) of the Constitution of India which states:

D "Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose and shall hold office until he attains the age of sixty five years.

E Provided that in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of India shall always be consulted."

It may be noted that there is no mention:

F (i) for any Collegium in Article 124(2).

(ii) The word used in Article 124(2) is 'consultation', and not 'concurrence'.

G (iii) The President of India while appointing a Supreme Court Judge can consult any Judge of the Supreme Court or even High Court as he deems necessary for the purpose, and is not bound to consult only the five seniormost Judges of the Supreme Court.

H 4. That by the judicial verdicts in the aforesaid two cases,

Article 124(2) has been practically amended, although amendment to the Constitution can only be done by Parliament in accordance with the procedure laid down in Article 368 of the Constitution of India. A

5. That under Article 124(2) while appointing a Supreme Court Judge, the President of India has to consult the Chief Justice of India, but he may also consult any other Supreme Court Judge and not merely the four seniormost Judges. Also, the President of India can even consult a High Court Judge, whereas, according to the aforesaid two decisions the President of India cannot consult any Supreme Court Judge other than the four seniormost Judges of the Supreme Court, and he cannot consult any High Court Judge at all. B C

6. Shri Ganguli submits that the matter is required to be considered by a larger Bench as the petition raises the following issues of Constitutional importance: D

(1) Whether the aforesaid two verdicts, viz. the 7-Judge Bench and 9-Judge Bench decisions of this Court referred to above really amount to amending Article 124(2) of the Constitution? E

(2) Whether there is any 'Collegium' system for appointing Supreme Court or High Court Judges in the Constitution? F

(3) Whether the Constitution can be amended by a judicial verdict or it can only be amended by Parliament in accordance with Article 368? G

(4) Whether the Constitutional scheme was that the Supreme Court and High Court Judges can be appointed by mutual discussions and mutual consensus between the judiciary and the executive; or whether the judiciary can alone appoint Judges of the Supreme Court and High Courts? H

- A (5) Whether the word 'consultation' in Article 224 means 'concurrence'?
- (6) Whether by judicial interpretation words in the Constitution can be made redundant, as appears to have been done in the aforesaid two decisions which have made consultation with High Court Judges redundant while appointing a Supreme Court Judge despite the fact that it is permissible on the clear language of Article 124(2)?
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- C (7) Whether the clear language of Article 124(2) can be altered by judicial verdicts and instead of allowing the President of India to consult such Judges of the Supreme Court as he deems necessary (including even junior Judges) only the Chief Justice of India and four seniormost Judges of the Supreme Court can alone be consulted while appointing a Supreme Court Judge?
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- E (8) Whether there was any convention that the President is bound by the advice of the Chief Justice of India, and whether any such convention (assuming there was one) can prevail over the clear language of Article 124(2)?
- F (9) Whether the opinion of the Chief Justice of India has any primacy in the aforesaid appointments?
- (10) Whether the aforesaid two decisions should be overruled by a larger Bench?

G 7. Mr. G.E. Vahanvati, learned Attorney General for India, supports the petitioner contending that the aforesaid judgments require reconsideration. However, he also submits:

- H (a) A writ petition under Article 32 is not maintainable at the behest of a Trust as the Trust cannot claim violation of any of its fundamental rights;

(b) Petitioner has no locus standi to seek review of the judgments of this Court. In fact, a petition under Article 32 of the Constitution does not lie to challenge the correctness of a judicial order; and

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(c) A bench of two Judges cannot examine the correctness of the judgment of nine Judges Bench.

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(d) A Bench of two Judges cannot refer the matter to the larger bench of nine Judges or more directly.

8. In *Coir Board Emakulam & Anr. v. Indira Devai P.S. & Ors.*, (2000) 1 SCC 224, this Court while dealing with a similar reference by a Bench of two Judges doubting the correctness of seven Judges' Bench judgment in *Bangalore Water Supply & Sewerage Board v. A Rajappa*, (1978) 2 SCC 213, held as under:-

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"The judgment delivered by the seven learned Judges of the Court in Bangalore Water Supply case, does not, in our opinion, require any reconsideration on a reference being made by a two Judge Bench of the Court, which is bound by the judgment of the larger Bench. The appeals shall, therefore, be listed before the appropriate Bench for further proceedings."

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9. The Constitution Bench of this Court in *Pradip Chandra Parija & Ors. v. Pramod Chandra Patnaik & Ors.*, AIR 2002 SC 296, while dealing with a similar situation held that judgment of a co-ordinate Bench or larger Bench is binding. However, if a Bench of two Judges concludes that an earlier judgment of three Judges is so very incorrect that in no circumstances it can be followed, the proper course for it to adopt is to refer the matter to a Bench of three Judges setting out, the reasons why it could not agree with the earlier judgment. If, then, the Bench of three Judges also comes to the conclusion that the earlier judgment of a Bench of three Judges is incorrect, reference to a Bench of five Judges is justified.

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A 10. In *Union of India & Anr. v. Hansoli Devi*, (2002) 7 SCC 273, this Court reiterated the same view placing reliance upon its earlier judgment in *Pradip Chandra Parija* (supra).

B 11. However, Mr. Ganguli dealing with the issue of locus standi of the Trust has submitted that the petition may not be maintainable but it should be entertained because it raises a large number of substantial questions of law. In order to fortify his submission he places reliance upon a recent Constitution Bench judgment of this Court in *B.P. Singhal v. Union of India & Anr.*, (2010) 6 SCC 331 wherein while dealing with the issue of removal of Governors, this Court held as under:

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“*The petitioner has no locus to maintain the petition in regard to the prayers claiming relief for the benefit of the individual Governors. At all events, such prayers no longer survive on account of passage of time. However, with regard to the general question of public importance referred to the Constitution Bench, touching upon the scope of Article 156(1) and the limitations upon the doctrine of pleasure, the petitioner has the necessary locus.*”

(Emphasis added)

Thus, Mr. Ganguli submits that considering the gravity of the issues involved herein, the matter should be entertained.

F 12. While dealing with the issue of reference to the larger Bench, Mr. Ganguli has placed a very heavy reliance of the recent order of this Court dated 30.3.2011 in Civil Appeal Nos.4056-4064 of 1999 (*Mineral Area Development Authority v. M/s. Steel Authority of India & Ors.*) wherein considering the issue of interpretation of the Constitutional provisions and validity of the Act involved therein, a three Judges Bench presided over by Hon'ble the Chief Justice has referred the matter to nine Judges' Bench.

H 13. At this juncture, Mr. Ganguli as well as Mr. Vahanvati

have submitted that even at the stage of preliminary hearing for admission of the petition, the matter requires to be heard by a larger Bench as this matter has earlier been dealt with by a three Judges Bench and involves very complicated legal issues. **A**

14. In view of the above, we place the matter before the Hon'ble Chief Justice for appropriate directions. **B**

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Matter referred to larger bench.