

SUPREME COURT ADVOCATES-ON-RECORD  
ASSOCIATION AND ANOTHER

A

v.

UNION OF INDIA

(Writ Petition (Civil) No. 13 of 2015)

B

DECEMBER 16, 2015

[JAGDISH SINGH KHEHAR, J. CHELAMESWAR,  
MADAN B. LOKUR, KURIAN JOSEPH AND ADARSH  
KUMAR GOEL, JJ.]

C

*Judiciary – Higher judiciary – Appointment of judges to the higher judiciary – Improvement in the working of the collegium system – Issuance of guidelines to make the collegium system of judges more transparent and accountable – Government of India to finalize the existing Memorandum of Procedure (MOP) 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 senior most puisne Judges of the Supreme Court – They would take into consideration suggestions on the issues of eligibility criteria, transparency in the appointment process, Secretariat, complaints and other matters in the MOP.*

D

E

*Supreme Court Advocates-on-Record Association v. Union of India 1993 (2) Suppl. SCR 659 : (1993) 4 SCC 441; Special Reference No. 1 of 1998 1998 (2) Suppl. SCR 400 : (1998) 7 SCC 739 – referred to.*

F

Case Law Reference

G

1993 (2) Suppl. SCR 659 referred to. Para 6.

1998 (2) Suppl. SCR 400 referred to. Para 7.

H

A CIVIL ORIGINAL JURISDICTION: Writ Petition (Civil) No. 13 of 2015.

Under Article 32 of the Constitution of India.

WITH

B W. P. (C) Nos. 23, 70, 83, 108, 124, 14, 18, 24, 209, 309, 310, 323 and 341 of 2015 and T. P. (C) Nos. 391 and 971 of 2015.

C Mukul Rohatgi, AG, Ranjit Kumar, SG, Ms. Pinky Anand, ASG, Shiv Mangal Sharma, C. D. Singh, Anil Grover, Suryanarayana Singh, Gaurav Bhatia, Ajay Bansal, AAGs, Fali S. Nariman, Anil B. Divan, R. K. P. Shankardas, K. N. Bhat, Sunil Gupta, Ajit Kumar Sinha, Arvind P. Datar, K. K. Venugopal, Subramonium Prasad, T. R. Andhyarujina, Vijay Hansaria, Siddharth Luthra, Manan Kumar Mishra, D P. P. Rao, Ram Jethmalani, Dr. Rajeev Dhawan, Gopal Subramaniam, Jaideep Gupta, Ms. Mahalakshmi Pavani, S. G. Hasnain, Sr. Advs., Subhash C. Sharma, Mrs. Astha Deep, S. K. Anand, Surya Kant, Dinesh Kumar Garg, Santosh Paul, Joseph Aristotle S., Arvind Gupta, Ms. Priya Aristotle, E Ms. Savita Singh, M. B. Elakkumanan, Ms. Swati Singh, Raghav Shekhar, Prashant Bhushan, Prashant Kumar, Ms. Anindita Pujari, Syed Rehan, Ranvir Singh, Jitendra Kr. Mohapatra, A. C. Philip, Anjan Sinha, Rabin Majumder, V. N. Subramanian, Subhasish Bhowmick, Ms. Prachi Bajpai, F Sriram Parakkat, Vishnu Shankar Jain, Ankur S. Kulkarni, Nikhil Rohatgi, Sameer Rohatgi, D. L. Chidananda, R. K. Verma, Mrs. Madhvi Divan, Thangathurai, Ms. S. Sharma, Arghya Sengupta, Abhinav Mukherji, Ms. Binu Tamta, Mrs. Diksha Rai, Ajay Sharma, Ms. Devanshi P., Ms. Ranjeeta Rohatgi, Samit G Khosla, Ms. Devanshi Singh, Gurmehar Singh S., Prabal Bagchi, Karan Seth, Rishabh Jain, Ms. Kritika Sachdeva, Ms. Snidha Mehra, Ms. Somya Thakur, B. V. Balaram Das, Devashish Bharuka, Ms. Abhinandini Sharma, Avanish Rathi, (For Ms. Ruchi Kohli), Tapesh Kr. Singh, Mohd. Waquas,

H

Shashank Singh, Sylona Mohapatra, A. P. Mayee, Gautam Narayan, Sapam Biswajit Meitei, Linthoingambi Thongam, Z. H. Isaac Haiding, Ashok Kumar Singh, Sanjay Kr. Visen, Mishra Saurabh, Ms. Pragati Nekhra, V. G. Pragasam, Prabu Ramasubramanian, Ahmad Abdi, Dr. Indra Pratap Singh, Ashutosh Dubey, Dr. B. K. Jauhari, Shashank Bajpai, Ms. Purnima Jauhari, Prakash Kumar Singh, Utkarsh Jaiswal, Gaurav Srivastava, Abhisht Kumar, Saral Chaturvedi, Abhishek Kumar Singh, K. V. Jagdishvaran, Mrs. G. Indira, Ms. Vinakshi Kadan, (For Ms. Hemantika Wahi), Jagjit Singh Chhabra, Kuldip Singh, Gaurav Yadava, M. Yogesh Kanna, Ritu Raj Biswas, Gopal Singh, Ms. Varsha Poddar, Nishant Katneshwarkar, Arpit Rai, Ms. Rachna Srivastava, Ms. D. Bharthi Reddy, Aviral Saxena, Ms. Shivani Khandekar, Ms. Aruna Mathur, Avneesh Arputham, Ms. Anuradha Arputham, Yusuf, Shobhit Nanda, Mrs. K. Enatoli Sema, Edward Belho, Amit Kumar Singh, Shivam Singh, Dattaprasad Lawande, Purna Bhandari, S. S. Rebello, Aurobindo Gomes Pereira, K. C. Kaushik, Ms. Shilpi Staya Priya Satyam, Ms. Bhuvneshwari Pathak, J. D. Nankani, Ms. Anjana Singh, Ms. Sneha Kalita, Ms. Shobha, Avnish Pandey, Abhinav Hansaria, Ms. Priyanka S. Mathur, Ms. Sunita Rao, Dr. Ritu Bhardwaj, Ms. Anjali Dwivedi, A. D. N. Rao, Annam Venkatesh, Sudipto Sircar, Ms. Neelam Jain, Ms. Vaishali P., Ms. Ankita Chadha, Parijat Sinha, Joydeep Mazumdar, Kaleeswaram Raj, Prasanth P., Ms. Lata Krishnamurti, Ms. Vagisha Kochar, P. R. Mala, Gautam Talukdar, Naik H. K., Prateek Chadha, Rudra Pratap Singh, Dr. Surat Singh, Sudhanshu Palo, Ms. Shobha, S. S. Rawat, Ajay Kumar Singh, (For M. S. Mahra, Ajay Prapa Sharma, K. S. Mahadevan, Krishna Kumar R. S., K. K. L. Gautam, (For Rajesh Kumar), Ms. Sneha Kalita, Ms. Purna Kumari, Arun Monga, (For Tushar Bakshi, Virag Gupta, Varun Thakur, (For V. K. Sharma), Deepak A. Masih, Ms. Manreet Kaur, (For V. K. Sharma), (For R. N. Keshwani), R. P. Luthra, S. S. Nehra, Prabhash Yadav, Saurabh Yadav, Chand Kiran, (For P. I. Jose), Sanpreet Singh Ajmani,

A

B

C

D

E

F

G

H

A (Col.) Ved Prakash, A. K. De, Ms. Indira Unninar, Ashwani Upadhyay, A. Subba Rao, R. Krishnamurthy, Advs. for the appearing parties.

Mathews J. Nedumpara, P. M. Duraiswamy Manohar Lal Sharma, R. K. Kapoor, Bishwajit Bhattacharyya, Rajiv Daiya, B Ashish Dixit, (Petitioner-in-person).

The following Order of the Court was passed:

### ORDER

C 1. The adjudication on the merits of the controversy, raised in this batch of cases, was rendered on 16<sup>th</sup> 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 D commenced on) 3<sup>rd</sup> November, 2015. Mr. Mukul Rohatgi, learned Attorney General for India, preferred written suggestions and supplemented them with oral submissions. E 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 F learned counsel, would improve the working of the system.

F 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 G 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 H 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 4<sup>th</sup> November, 2015. The above committee presented the compilation on 5<sup>th</sup> November, 2015.

A

B

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 5<sup>th</sup> November, 2015:

C

“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.

D

E

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.

F

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

G

H

A Council of India). Suggestions may be made in the four categories, i.e., Transparency, Collegium Secretariat, Eligibility Criteria and Complaints.

B 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.

C 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.”

E 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.

F 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”.

H

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. A

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 30<sup>th</sup> 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**<sup>1</sup>: B  
C  
D  
E

“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 F  
G

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



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.

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

- A 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**

- B 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.

C

**Complaints**

- D 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**

- E 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.

- F 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*.

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