

(1994) 11 MAD CK 0115
In the Madras High Court

A.D.C. Gurusamy

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 24-11-1994

Acts Referred:

Citation : (1995) 1 MLJ 655

Hon'ble Judges : Shivaraj Patil, J

Bench : Division Bench

Judgement

Shivaraj patil, J.—Heard the petitioner. This writ petition came up for admission on 22.11.1994. After hearing the petitioner for some time it was posted to 23.11.1994 with a suggestion to the petitioner that before making further submissions he may look into the decisions of the Supreme Court relating to the subject. The matter was listed on 23.11.1994. As per the practice of this Court it was listed in the list of adjourned admissions. On 23.11.1994 after the motion cases it was taken up in its order and heard till the rising of the court. Under the circumstances the case was adjourned to today.

2. Today after finishing the motion cases I reached this matter in the adjourned list and heard the petitioner. At the end of the arguments, when I was about to dictate the order the petitioner submitted that he had sent a telex message to the Honourable the Chief Justice and other two Honourable Judges of the Supreme Court at 3.06 p.m. which reads thus:

My Writ Petition No. 19295 of 1994 interim injunction petition even though listed for three days was not finally heard by Justice Shivaraj Patil.

Sanctioned strength of Judges has not been filled up for the past two years to Madras High Court Please withdraw my writ petition and pass interim injunction restraining Union of India from transferring our Judges to other High Court.

Since sanctioned strength not filled up the action of Union of India is a fraud upon the Constitution.

The load of this Court being heavy on 22nd, 23rd and 24th, if the petitioner was so particular he should have mentioned to take up the case on priority in the forenoon either yesterday or today.

3. The petitioner in this writ petition has prayed for a writ of mandamus directing the respondent to fill up the sanctioned strength of Judges (28 Judges) for the Madras High Court by appointing two more Judges forthwith.

4. The petitioner in the affidavit filed in support of the writ petition states that it is the feeling of the litigant public and lawyers that there is a long delay in disposal of regular appeals and second appeal in the High Court at Madras; Article 224 mandates that arrears have to be cleared off within a period of two years; additional Judges have to be appointed for the specific purpose of pending cases within a period of two years; the sanctioned strength of Judges of this High Court as on 1.1.1993 was 28; the Union of India is under the Constitutional obligation to fill up the sanctioned strength of 28 Judges to this Court. By not fulfilling the said constitutional obligation the respondent has caused legal injury to a determinate class of persons viz., the litigants of this Court. He has further stated in the affidavit that recently on 17.10.1994 six new Judges were appointed by the respondent to this Court; the strength was then increased to 27 Judges, but all of a sudden the newly appointed Honourable Mr. Justice K. Sampathkumaran was transferred to the High Court of Punjab and Haryana. Again it has been reported to the Madras Advocates' Association that four learned Judges who took office of Judgeship of this Court on 17.10.1994 have been under orders of transfer to different High Courts; instead of transferring the above five Judges, if they were directly appointed by the respondent to the respective High Courts the litigant public may not have any grievance; the litigant public never expected that the five newly appointed Judges would be transferred within a period of one month. Further, the five new learned Judges have been deprived of their right to resume practice in this High Court after retirement. The petitioner further states that by exercising the powers of transfer under Article 222 of the Constitution, the Union of India actually created more vacancies within the meaning of Article 217(1)(c) of the Constitution. It is further stated in the affidavit that the date of retirement of a Judge is known on the date he enters office. The date of vacancy of the post being known for years before, there can really be no justifiable excuse for inaction in the initiation of steps for filling up the sanctioned strength well in advance. Thus, the respondent is under the Constitutional obligation to keep the system of filling up the vacancy so perfect and that not a day's Judge Strength should be lost to this High Court.

5. On the basis of these statements made in the affidavit the petitioner has sought for a writ of mandamus as stated above.

6. Along with the writ petition, Writ Miscellaneous Petition No. 29384 of 1994 also is filed praying that this Court be pleased to pass an interim injunction against the respondent Union of India restraining to give effect to the transfer of Honourable Mr. Justice K. Ramamoorthy, Honourable Mr. Justice A.S.

Venkatachalamoorthy, Honourable Mr. Justice N. Dhinakar and Honourable Mr. Justice P. Shanmugam by transferring from this High Court to any other High Court pending disposal of the main writ petition. This W.M.P. is also supported by an affidavit of the petitioner. The averments in the said affidavit are identical with the averments made in the affidavit filed in support of the writ petition.

7. The petitioner contended that he is espousing a public interest and he is not pleading the case of any learned individual Judge. According to him the vacancies in the High Court should be filled up immediately. Even if the initial appointments are to be made from the members of the Bar of one High Court to the other High Courts they could be directly be made to that High Court. But by appointing new Judges to one High Court and transferring them within a short period to other High Courts amounts to playing a fraud on the Constitution. In support of his submission the petitioner relied on a decision of the Supreme Court in the case of H.H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur of Gwalior and Others Vs. Union of India and Another, , in particular he pointed out paragraph 271 of the said Judgment.

8. I have considered the submissions made by the petitioner carefully. The Supreme Court in the case of Supreme Court Advocates-on-Record Association and another Vs. Union of India, , in paragraphs 501 to 508 of the said judgment has elaborately dealt with the aspect of appointment of Judges to the High Courts and Supreme Court, and sufficient guidelines/ directions are given to avoid delay in the appointments. The initiation of the proposal for appointment of Judges has to be made by the Chief Justice of India and the Chief Justices of the High Courts as the case may be. Thereafter, a time schedule is given to ensure appointments speedily to fill up the vacancies in the various High Courts. When sufficient guidelines, norms and directions are already given by the Supreme Court in regard to the filling up of vacancies, I do not think it necessary to entertain this writ petition for issue of a writ of mandamus as sought for.

9. Further no material is placed and no averments are made to specifically contend that number of vacancies are lying unfilled for unreasonably a long time. The appointments of Judges to High Court has to be done having regard to constitutional provisions, and in view of what is stated in paragraph 501 in the Judgment of the Supreme Court in Supreme Court Advocates-on-Record Association and another Vs. Union of India, , it is unnecessary to entertain this writ petition. Moreover in view of the same Judgment, as already stated above, initiation for appointment of Judges is to be made by the Chief Justice of India or the Chief Justices of the High Courts. The Union of India and other constitutional functionaries have to act within the time schedule set out in the said Judgment. This being the position. I do not think that this writ petition should be entertained.

10. As regards the interim injunction sought for in W.M.P. No. 29384 of 1994, I must state that it is not open for this Court to pass such an interim order having regard to what is stated by the Supreme Court in the case of K. Ashok Reddy Vs.

The Government of India, . Paragraphs 18 and 22 of the said judgment read thus:

18. The Judges" Case II Supreme Court Advocates-on-Record Association and another Vs. Union of India, , does not exclude judicial review but merely limits the area of justiciability to the constitutional requirement of recommendation of the Chief Justice of India for exercise of power under Article 222 by the President of India. The power under Article 222 of the Constitution is to be exercised by the highest functionaries in the country in the manner indicated which provide a several inbuilt checks against the likelihood of arbitrariness or bias. In S.P. Gupta Vs. President of India and Others, , even though the concept of locus standi for challenging the transfer policy was liberalised and the standing to sue in public interest litigation has been considerably widened, yet the validity of individual transfers was examined only at the instance of the transferred Judge and not at the instance of anyone else. The need for restricting the standing to sue in such a matter to the affected Judge, alone has been reiterated in this Judges" case II. It is, therefore made clear that the transfer of a High Court Judge is justiciable only on the ground indicated in the Judges" Case II and only at the instance of the transferred Judge himself and not anyone else. This emphasis is necessary to prevent any transferred Judge being exposed to any litigation involving him except when he chooses to resort to it himself in the available limited area of justiciability.

22. It is for this reason that the reduced area of justiciability has been indicated in the Judges" case II. When it was said in the Judges" Case II Supreme Court Advocates-on-Record Association and another Vs. Union of India, , that the ground of bias also is not available for challenging a transfer, it was to emphasise that the decision made by the collective exercise of several Judges at the apex level on objective criterion on which the recommendation of the Chief Justice of India is based, is an inbuilt check against arbitrariness and bias indicating absence of need for judicial review on those grounds. This is how the area of justiciability is reduced in the sphere of judicial review of transfer of Judges.

11. The decision cited by the learned petitioner viz., H.H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur of Gwalior and Others Vs. Union of India and Another, , in support of his contention that what cannot be directly achieved cannot be permitted to be achieved indirectly, in my view, does not help the petitioner. In this view the interim injunction as sought for also cannot be granted.

12. Thus for the reasons stated above, I reject the writ petition at the stage of admission. W.M.P. No. 29384 of 1994 also is dismissed accordingly.