
(2005) 08 MAD CK 0033
In the Madras High Court
Case No : Writ Petition No. 24849 of 2005

G. Rajendran

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 11-08-2005

Acts Referred:

Constitution of India, 1950 — Article 217, 217(1), 217(2), 224, 226

Citation : AIR 2006 Mad 100 : (2005) 4 LW 229

Hon'ble Judges : T.V. Masilamani, J;M. Karapagavinayagam, J

Bench : Division Bench

Advocate : Party in Person, for the Appellant; V.T. Gopalan, Addl. Solicitor General assisted by P. Wilson, for respondents 1 and 2 and N.R. Chandran, General assisted by P.S. Jayakumar, Addl. Govt. Pleader for respondent 3, for the Respondent

Judgement

M. Karpagavinayagam, J.—G. Rajendran, party-in-person, claiming himself as the President of Madras High Court Practicing Advocates"

Association, has filed this Writ Petition under Article 226 of the Constitution of India, seeking for the prayer, as under :

I therefore pray that this Hon"ble Court may be pleased to issue a writ of mandamus or any other appropriate writ, direction or order, in the

nature of writ, directing the Union of India, represented by Secretary, Ministry of Law and Justice, first respondent, and Union of India,

represented by Secretary, Home Department, second respondent, to strictly follow the guidelines laid down by the Hon"ble Supreme Court in the

case, namely, Supreme Court Advocates-on-Record Association and another Vs. Union of India, and also the suggestions mentioned in this Writ

Petition, in the matter of appointment of Judges to the Hon"ble High Court from out of the lists so far sent to the Union of India, Ministry of Law

and Justice, which are pending consideration.

2. The circumstances, which led to the filing of this Writ Petition as a pro bono publico, according to the party-in-person, are as follows :

(a) Petitioner has been given to understand that recently a list of names of advocates were recommended for elevation as Judges of this High

Court. He came to know from the newspaper reports and from the Members of the Bar that most of them are having political attachment and

membership in political parties. When such politically attached advocates get elevated to the post of High Court Judges, there is every possibility of

showing bias or favoritism. Therefore, C.B.I. or I.B. may be requested to investigate and report separately on the political affiliation or association

of any advocate, who has been recommended for elevation, before deciding the matter. If it is found that the advocate belongs to political party, it

may be decided that he shall not be appointed as a Judge of the High Court. In addition, yet another new deplorable malady has taken place that

some of the advocates now recommended are very close relatives, classmates, former associates or convenient friends of the Hon"ble sitting and

retired Judges of the Madras High Court. Thus, it is clear that nepotism has crept in.

(b) If the higher Judiciary of the State is allowed to be occupied by the family members of the sitting and retired Judges and political personalities,

there may be a phenomenon of anarchism in the modern time of judicial activism, equalism and independence. So, the advocates, who are close

relatives and convenient friends of the sitting and retired Judges, are not to be appointed.

(c) He saw a news item in Tamil Daily ""Thina Thanthi"" on 28.01.2005 , giving the news that names of 12 new persons have been sent by the Chief

Justice of the High Court, recommending for their appointment. He sent a representation to Law Minister on 30.11.2004 and a letter to Law

Secretary and Home Secretary on 30.07.2005, objecting to the appointment of the persons, who are politically connected and closely related to

Judges. Some of them are related to Judges and some of them are connected to political activities. But, there is no response. Hence, he has filed

this Writ Petition, seeking for a mandamus.

3. We have heard Mr. G. Rajendran, party-in-person. He argued at length, on the

basis of the guidelines laid down by the Supreme Court in

Supreme Court Advocates-on-Record Association and another Vs. Union of India, . Pointing out various paragraphs, he submitted that in view of

the guidelines given by the Supreme Court relating to the undesirability of the political influence and nepotism, which should be discouraged,

suitable directions may be issued by this Court to respondents 1 and 2, to follow those guidelines, given by the Supreme Court. He would further

point out that before deciding the appointments, the authorities concerned may consult the Presidents of various Advocates' Associations, Senior

Advocates and also the public, by giving suitable advertisements, mentioning the names of the persons, proposed to be appointed as Judges.

4. We have also heard Mr. V.T. Gopalan, learned Additional Solicitor General, appearing for the Union of India and Mr. N.R. Chandran, learned

Advocate General, appearing for the State.

5. We have carefully considered the submissions made by the counsel for the parties.

6. At the outset, it shall be stated that the prayer in this Writ Petition is not only innocuous, but also preposterous. Before dealing with the said

strange prayer, it would be worthwhile to express our anguish over the averments made by the petitioner, who is a practising advocate and

claiming himself to be the President of Madras High Court Practising Advocates' Association, to the extent of casting aspersions on the persons,

whose names were allegedly sent with the recommendation, by the Hon'ble Chief Justice, as contained in the Tamil Newspaper ""Thina Thanthi"",

dated 28.01.2005.

7. The petitioner, without any material whatsoever, would state that some of the advocates, now recommended, are very close relatives,

classmates and convenient friends of the sitting and retired Judges of this Court.

8. It is quite unfortunate to state that some of the persons, whose names are found in the list of advocates and recommended for elevation, belong

to political parties and, therefore, they should not be allowed to get elevated.

9. We are at a loss to understand as to how this sort of allegation, casting general aspersions on the members of the Bar without placing any

material, could be made. The petitioner, as party-in-person, should have shown responsibility, while approaching this Court, in order to convince

this Bench that his prayer is genuine and he has come with clean hands and clean mind.

10. A perusal of the affidavit, filed in this Writ Petition, would indicate that there is a general allegation, casting aspersions on all the persons, whose names are mentioned in the list, which has been sent for consideration.

11. As laid down in *Dr. B. Singh Vs. Union of India (UOI) and Others*, , the Court has to be satisfied about : (a) the credentials of the applicant,

(b) the prima facie correctness or nature of information given by him, and (c) the information being not vague and indefinite. The information should

show gravity and seriousness involved. The Court has to strike a balance between two conflicting interests :

(i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others and

(ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions.

12. It is not the ipse dixit of any individual to say as to whether the recommended person is fit for appointment, by making wild allegations, which

has become common these days, and has resulted in delaying appointment of Judges, though a large number of vacancies exist in different High

Courts.

13. The high-sounding words used in the petition by the petitioner about the desirability of a transparent judicial system cannot, in our view, turn a

misconceived petition filed with oblique motives to be treated as a public interest litigation.

14. The peculiarity in the prayer, sought for by the petitioner, is that the advocates, who are politically connected and closely acquainted with the

Judges, are about to be appointed and the same should be stopped.

15. The procedure for appointment of a Judge is provided in Article 217 of the Constitution. The process is an elaborate one. Where a particular

person is to be appointed as a Judge, the modalities and procedures, to be adopted, have been elaborately dealt with in *Supreme Court*

Advocates-on-Record Association and another Vs. Union of India, and in *Presidential Reference*, reported in *In Re: Appointment and Transfer of*

Judges, .

16. Article 217(1) of the Constitution of India, which is relevant, reads thus :

Appointment and conditions of the Office of a Judge of a High Court :

(i) Every Judge of a High Court shall be appointed by the President by warrant under his hand and seal after consultation with the Chief Justice of

India, the Governor of the State, and, in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court, and

shall hold office, in the case of an additional or acting Judge, as provided in Article 224, and in any other case, until he attains the age of sixty-two

years...

17. The Constitutional functionaries, like the Judges of the High Court, who are required to be involved in the selection process in terms of Article

217 of the Constitution are, the President of India, the Chief Justice of India, the Governor of the State and the Chief Justice of High Court.

18. As referred to in Supreme Court Advocates-on-Record Association and another Vs. Union of India, in the case of appointment of a Judge to

the High Court, the proposal emanates from the Chief Justice of the High Court and that proposal is considered by the Chief Minister of the State

and duly processed through the Governor and forwarded to the Chief Justice of India through the Ministry of Law and Justice. Thereafter, the

Ministry of Law, with the recommendation of the Chief Justice of India, forwards the proposal to the Prime Minister, who, then, approves and

advises the President to issue a formal warrant.

19. Paragraphs 224, 225 and 504 of the judgment in Supreme Court Advocates-on-Record Association and another Vs. Union of India, , would

clearly indicate that there are norms fixed for selecting the persons, to be appointed as Judges of the High Court. While recommending a candidate

for the higher State Judiciary, the Chief Justice of the High Court has the advantage of proximity in evaluating the caliber and legal ability of the

candidate. However, the Chief Justice of India, before whom the opinion of the Chief Justice of the High Court as well of the State Government is

placed with all the relevant materials concerning the proposal, is in a better position either to accept the recommendation or reject it for strong and

cogent reasons to be recorded. The merit of a candidate with regard to his/her professional attainments, legal soundness, ability, skill etc. can be

evaluated only by the Chief Justice of the High Court in the matter and, ultimately, to be approved by the Chief Justice of India. However, since the

Judiciary does not have sufficient machinery of its own to check the antecedents and background of the candidate, Chief Justice of the High Court

and the Chief Justice of India may not be in a position to express any opinion about the character and antecedents of the candidate. But, the

Government, with its powerful machinery, can check the antecedents and background of the candidate and give its opinion on that aspect.

20. When a recommendation of the Chief Justice of a High Court comes to the Chief Justice of India with all particulars, including the background

of such candidate, the Chief Justice of India will be in a better position, on examination of all the materials placed before him, to evaluate the fitness

of the candidate. Therefore, in all circumstances, the opinion of the Chief Justice of India is entitled to have the right of primacy in the matter of

selection of Judges to the High Courts.

21. In matters relating to the appointment of Judges to the High Court, the Chief Justice of India is expected to take into account the view of his

colleagues in the Supreme Court, who are likely to be conversant with the affairs of the High Court concerned. The Chief Justice of India may also

ascertain the view of one or more Senior Judges of the High Court, whose opinion, according to the Chief Justice of India, is likely to be significant

in the formation of his opinion. The opinion of the Chief Justice of the High Court would be entitled to the greatest weight, and the opinion of the

other functionaries involved must be given due weight, in the formation of the opinion of the Chief Justice of India. The Chief Justice of India, for

the formation of his opinion, has to adopt a course, which would enable him to discharge his duty objectively to select the best available persons as

Judges of the High Courts. This ensures that the opinion of the Chief Justice of India is not merely his individual opinion, but an opinion formed

collectively by a body of men at the apex level in the judiciary.

22. When there is already inbuilt check procedure contemplated under Article 217 and also the guidelines given by the Supreme Court in *In Re:*

Appointment and Transfer of Judges, the approach of the petitioner, that too as party-in-person, seeking for a direction from this Court to

respondents 1 and 2 to follow the guidelines by way of judicial review, is totally misconceived.

23. In this context, it would be worthwhile to refer to the observations regarding

the judicial review made by the Supreme Court in In Re:

Appointment and Transfer of Judges, , which are as follows :

Judicial review in the case of an appointment, or a recommended appointment, to the Supreme Court or a High Court is, therefore available if the

recommendation concerned is not a decision of the Chief Justice of India and his senior-most colleagues, which is constitutionally requisite. They

number four in the case of a recommendation for appointment to the Supreme Court and two in the case of a recommendation for appointment to

a High Court. Judicial review is also available if, in making the decision, the views of the senior-most Supreme Court Judge, who comes from the

High Court of the proposed appointee to the Supreme Court, have not been taken into account. Similarly, if, in connection with an appointment, or

a recommended appointment, to a High Court, the views of the Chief Justice and senior Judges of the High court, as aforesaid, and of Supreme

Court Judges knowledge about that High Court have not been sought or considered by the Chief Justice of India and his two senior-most puisne

Judges, judicial review is available. Judicial review is also available, when the appointee is found to lack eligibility.

24. In view of the above observations, it is clear that this Court can entertain the Writ Petition, inasmuch as the scope of judicial review is limited,

only on two grounds:

(i) want of consultation with the named Constitutional functionaries, and

(ii) lack of any condition of eligibility in the case of appointment. That means, there cannot be a judicial review on any other ground.

25. It is not the case of the petitioner that any one of these circumstances has arisen in this case.

26. As pointed out by the learned Advocate General, recommendations have been sent and they are yet to receive the attention of the Chief

Justice of India and to go through the process, that is contemplated in terms of the Constitution and the judgement of the Apex Court.

27. It is also not the case of the petitioner that the persons, whose names are stated to be recommended for appointment, lack eligibility, as

prescribed in Article 217(2) of the Constitution. On the other hand, it is the contention of the petitioner, as party-in-person, that even though the

persons, whose names mentioned in the list which was sent, are eligible and

capable, they should not be appointed, since they happen to be the relatives of the Judges or closely connected with the political activities.

28. This submission reflects lack of understanding of the provisions, contained in Article 217 of the Constitution. Though suitability is a different

matter, it can be decided by the Constitutional functionaries, as per the judgment of the Apex Court, in the cases of Supreme Court Advocates-

on-Record Association and another Vs. Union of India, and the In Re: Appointment and Transfer of Judges, . It is clearly held in those decisions

that it is for these Constitutional functionaries to decide as to whether the person, whose name has been recommended, is suitable or not for being

appointed to the High Court. No person outside the group of Constitutional functionaries referred to into the relevant Articles of the Constitution

and in the judgment of the Supreme Court in the cases referred to supra can claim any right to impose his or her opinion on the suitability on those,

who are charged with the responsibility of considering the suitability of the candidate.

29. It is clear beyond any doubt that no one has a right to seek judicial review of the appointment process even before the matter has reached the

stage, where the Hon'ble Chief Justice of India and the other Hon'ble Judges of the Apex Court are required to consider the names of the persons

recommended for appointment. The recommendations made by the Chief Justice of India, after due consultation with his colleagues and the Chief

Justice of the High Court, is to have primacy in the matter of final selection and appointment of Judges of the High Court.

30. As held by the Apex Court, merit alone has to be the predominant consideration in judging as to whether a person is the best and the most

suitable for appointment as a Judge of the High Court, irrespective of his caste, creed, colour, religion and political affiliations.

31. Therefore, we are not inclined to give any direction or suggestion to any of the authorities, as suggested by the party-in-person. On the other

hand, we deem it appropriate to suggest the petitioner, who is a practising advocate in this Court, to concentrate more on practice in the High

Court, instead of filing this sort of vexatious petitions and wasting the Court's time. In the light of what is stated above, it is not possible for us to

entertain this Writ Petition.

32. In the result, we dismiss this Writ Petition, at the admission stage itself. No costs. Consequently, the connected W.P.M.P. No. 2720 9 of 2005 is also dismissed.