
(1988) 01 PAT CK 0005
In the Patna High Court
Case No : C.W.J.C. No. 4991 of 1987

K.P. Verma

APPELLANT

Vs

The President of India and Others

RESPONDENT

Date of Decision : 18-01-1988

Acts Referred:

Constitution of India, 1950 — Article 217, 226, 227

Citation : (1988) PLJR 360

Hon'ble Judges : Uday Sinha, J; K.B. Sinha, J

Bench : Division Bench

Advocate : K.P. Verma Party In person, for the Appellant;

Judgement

1. In this application under Articles 226 and 227 of the Constitution of India the petitioner has prayed the following:--

(i) To direct respondent Nos. 1 to 6 to recommend and appoint eligible Advocates of the State of Bihar to the post of High Court Judges of this Court; Specially those Advocates who are practising in the District and Sub-Divisional Courts.

(ii) To stop appointment of Judges who are not residents of the State or who have not been practising within the jurisdiction of the Patna High Court.

(iii) To direct respondent Nos. 1 to 6 to transfer five Judges (names mentioned in paragraph 8 of the petition) to their respective States from where they have been appointed.

(iv) To direct respondent Nos. 1 to 6 to fill up the vacancy by the lawyers of the district and sub-divisional Bars as well as judicial Officers of the State of Bihar.

(v) To direct respondents 1 to 6 to appoint lawyers of the district and sub-divisional Bars against the present vacancy of the High Court;

(vi) To pass any other order or orders which this Court may deem fit and proper.

All the prayers sum up into three submissions; they are firstly, that lawyers

practising in the district and sub-divisional courts be appointed Judges of the High Court, secondly that persons residing outside the State of Bihar or who have not practised within the jurisdiction of the Patna High Court be not appointed judges of this Court and thirdly that the judges who have been appointed from Uttar Pradesh and Haryana be transferred back to the High Courts of those States.

2. In regard to the first point, the submission of Mr. K.P. Verma (not the Ex-Advocate General) is that lawyers practising in the district courts and sub divisional courts are also eligible to be considered for appointment as judges of this Court. There can be no dispute about it. Every lawyer who has practiced within the jurisdiction of this Court or any Court is eligible to be appointed High Court Judge. The difficulty arises as to the selective process which commences with the recommendation made by the Chief Justice. Who is fit and proper to be appointed a High Court Judge has to be decided only by the Chief Justice. He is not required to put in writing in black and white the names of thousands and thousands of lawyers, who may claim their right to be considered. The Chief Justice can recommend the names of such persons, whom he knows. The persons whom he does not even know cannot be recommended and the Chief Justice will not be justified in recommending the names of persons, whom he does not know. That matter must be left to the discretion of the Chief Justice. While conceding that every lawyer who has put ten years practice may be appointed a Judge, the selection of personnel is left to the Chief Justice. Persons whom he does not consider suitable, he should not recommend. This Court sitting in writ jurisdiction cannot direct the Chief Justice or respondent Nos. 1 to 6 to write down the names of thousands of lawyers on sheets of paper and go on mentioning against each name why they have not been considered fit for recommending their names to be appointed High Court Judge. The selective process of appointment of Judges has stood the test of time since the very inception of this High Court. It is difficult for this Bench to say whether the Chief Justices have been considering the names of the district or sub-divisional courts lawyers or not nor can the Chief Justice be compelled to divulge that matter.

In that view of the matter prayer of the petitioner that the lawyers practising in the district and sub-divisional Courts be appointed judge cannot be granted by this application.

3. The next submission is that persons who are not residents of the State of Bihar or who have not practiced within the jurisdiction of this High Court are not eligible to be appointed Judges of this Court is equally without merit. The process of appointment of a High Court judge is mentioned in Article 217 of the Constitution. It does not place any bar on any person of any State to be judge of any High Court. The only restriction is that he must be a citizen of India. That being so, the appointment of persons from outside the State to this High Court is invulnerable. Article 222 of the Constitution provides for transfer of a Judge from one High Court to another. If that is permissible, I cannot appreciate why citizens

of Uttar Pradesh or Haryana cannot be appointed to Patna High Court and Vice versa. Whether in fact, they will be appointed or not is a question for the respective Chief Justices and President of India to sort out but there is no legal bar to it. In that view of the matter, the second submission also is devoid of any substance and must be rejected.

4. The third submission that the judges of this court, who were residents of Uttar Pradesh or Haryana be sent back to their present State is too much for this Court to order. Every judge is appointed by the President of India after consultation with the Chief Justice of India. There is provision for transfer of a judge from one High Court to another. Whether they should be transferred or not is for the President and Chief Justice of India to decide and not for puisne Judge of a High Court.

5. Mr. K.P. Verma submitted that there is a growing resentment about appointing from outside the State as Judges of this Court without any one from the State being appointed to other High Courts. He has submitted that the feeling in this is that the Union of India treats Bihar as a dumping ground. We take note of this fact but this is not a matter requiring judicial adjudication by us.

6. The petitioner had agitated these questions earlier in C.W.J.C. No. 4716 of 1982. That was dismissed after full hearing on 1.12.1982, though by a one line order "Heard. This application is dismissed". The petitioner not being satisfied with the verdict of this court moved the Supreme Court with a subject matter of Civil writ petition to. 10559 of 1983. The Supreme Court also dismissed the said application on 5.12.1983. Thereafter to agitate the same question again was not justified for Mr. Verma. Mr. K.P. Verma appearing in person has contended that an application dismissed by one line order is no decision and he is entitled to agitate the same question once again or any number of times. We regret, Mr. Verma is not right. This attitude is not fair to the Court.

7. For all the reasons, stated above, we find no merit in this application.

8. Mr. K.P. Verma cited some decisions of the Supreme Court as also other High Courts in the cases; Subir Chowdhury Vs. Union of India (UOI) and Others, ; Prof. Chandra Prakash Agarwal Vs. Chaturbuj Das Parikh and Others, ; V.G. Row Vs. A. Alagiriswamy and Others, ; S.P. Gupta Vs. President of India and Others, ; Arun Damka Vs. Additional Inspector-general of Police and Another, , in support of the application. In our view, none of them are relevant.

9. We have been constrained to pass a long order after hearing Mr. Verma for three days because he insisted upon a reasoned order being passed. We have done accordingly. This application is dismissed accordingly. However, there will be no order as to costs.