
(2013) 06 AP CK 0064
In the Andhra Pradesh High Court
Case No : PIL No. 227 of 2012

Prabhunath Vasireddy

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 07-06-2013

Acts Referred:

Constitution of India, 1950 — Article 124, 124(4), 14, 217, 217(1)

Citation : (2014) 1 ALD 421 : (2013) 6 ALT 172

Hon'ble Judges : Nooty Ramamohana Rao, J; L. Narasimha Reddy, J

Bench : Division Bench

Advocate : Prabhunath Vasireddy Party in Person, for the Appellant; Ponnam Ashok Goud, Assistant Solicitor General for Respondent No. 1, Advocate General for GP for GAD for Respondent Nos. 2 and 4 and Sri P. Venugopal, SC for Andhra Pradesh High Court, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—The petitioner is an Advocate, practicing in the High Court of A.P. He filed these writ petitions in the form of a Public Interest Litigation, for a Writ of Mandamus in the form of a declaration to the effect that the selection and recommendation of the name of the 5th respondent in each of the writ petitions (for short, "the incumbents") by respondents 2 to 4 for appointment as Judges of High Court, is illegal, arbitrary and violative of Articles 14 and 217 of the Constitution of India and for consequential order to set aside the selection and recommendation. The ground pleaded by the petitioner for claiming the relief is that respondents 2 to 4 did not take the relevant factors provided for under Article 217 of the Constitution of India into account, in the process of consultation. Since the parties to both writ petitions are common, except for the 5th respondent, reference to the parties, shall be deemed to those in both writ petitions, unless otherwise mentioned. Substantial portion of the affidavit filed in support of the writ petition, which runs to 27 pages, is devoted to narrate the process of appointment of a person as Judge of High Court and the basic qualifications that are required to be possessed by such person, for being

recommended for appointment to that Office.

2. The petitioner states that on 08.09.2009, the Chief Justice of the High Court of A.P., the 3rd respondent herein, has selected and recommended the names of four advocates from the High Court, including the names of the incumbents for appointment of the Judges of High Court and that objections were raised from various circles against the recommendation of the names of incumbents. The petitioner is also said to have joined some advocates in submitting representation to the Chief Justice of India, with a request to reject the recommendation.

3. The petitioner filed W.P. No. 264 of 2010 before this Court, in relation to the process referred to above. It was dismissed by a Division Bench of this Court, on being informed that the recommendations made by the 3rd respondent on 08.09.2009 were returned by the Government of India. According to the petitioner, one day after the writ petition was dismissed, the 3rd respondent forwarded a list of 14 advocates, including that of respondent No. 5 and the same is said to have not been agreed to, by the State of Andhra Pradesh, mainly on the ground that the names, which were rejected earlier were included in the fresh recommendation. The petitioner filed W.P. (Civil) No. 314 of 2011 before the Supreme Court challenging the recommendation made by the 3rd respondent on 29.04.2011 for appointment of 14 judges. The said writ petition was dismissed, in view of the order passed in another writ petition on the same subject-matter.

4. The petitioner submits that the panel forwarded by the 3rd respondent on 29.04.2011 was returned/rejected by the Chief Justice of India and that the efforts made by the petitioner to know the reasons did not fructify. The grievance of the petitioner is that in spite of the unfavourable reaction from the Supreme Court, and the Central Government, the 3rd respondent, has once again, recommended the names of the incumbents along with the name of another advocate, for appointment of Judge of High Court of A.P., and the same cannot be sustained in law.

5. After enlisting the basic tenets and the characteristics that are specific to the office of the Judge of High Court, the petitioner submits that the incumbents do not possess them. Extensive reference is made to the proceedings that ensued in the matrimonial matters of the 5th respondent in PIL. No. 227 of 2012. It is pleaded that those and other relevant matters were not taken into account, while recommending the names of the incumbents for the third time.

6. The writ petition was filed before the High Court on 19.06.2012. Initially, the office raised certain objections, as to the maintainability of the writ petitions. The objections were over-ruled by a Division Bench, of this Court on 22.06.2012. After it was numbered, the writ petitions were posted before a Division Bench for admission. However, the petitioner, who wanted to argue the matter in person, appears to have raised an objection for the matter being heard by the Division

Bench with certain composition. At that stage, the writ petitions underwent three adjournments. In the meanwhile, the incumbents, whose names were recommended, were appointed as Judges and they have assumed Office. In view of this development, the petitioner filed PILMP. No. 332 of 2012, with a prayer to permit him to amend the prayer in PIL. No. 227 of 2012.

7. The matters were listed before a Division Bench, comprising of Hon"ble Chief Justice and another learned single Judge on 04.03.2013. Since the Hon"ble Chief Justice figured as respondent No. 3, in the writ petitions, it was directed to be listed before another bench. That is how, it is before this Court.

8. The petitioner addressed extensive arguments at the stage of admission itself. Apart from reiterating the contents of the affidavits filed in support of the writ petitions, he has explained the procedure involved in the appointment of Judges, with reference to the relevant provisions of law and decided cases. He contends that the process of consultation contemplated under Article 217 of the Constitution of India is an important step, having regard to the fact that neither any examination is conducted, nor any other process is undertaken to test the knowledge, aptitude and other characteristics of an individual, before he is appointed as Judge of the High Court. The petitioner submits that the appointment involves the stages of ascertaining the "eligibility" and "suitability", and while the "eligibility" of a given individual for being appointed as Judge is amenable to judicial review, the one pertaining to "suitability" is kept outside it, except in certain extreme cases.

9. According to the petitioner, the 5th respondent lacked the eligibility to be appointed as Judge of High Court. On the phenomena of "suitability" also, the petitioner contends that the consultation process in the instant case has suffered from serious infirmity, on account of the failure on the part of the concerned authorities to take into account valuable information, and judicial review can be undertaken. The petitioner submits that the personal life of the 5th respondent in PIL. No. 227 of 2012 is such that it would render him ineligible for the high office.

10. Learned Advocate General appearing for the State of A.P., the 4th respondent and Sri P. Venu Gopal, appeared for the High Court of A.P., on the other hand, submit that the writ petitions are liable to be dismissed in limini for more reasons than one. According to them, once the incumbents have been appointed as Judges, and have assumed charge, there is no way, their appointments can be examined by any Court of law, having regard to the protection of tenure given under the Constitution of India. They contend that the incumbents were found to be not only eligible, but also suitable for the office by the Constitutional functionaries, who are associated with the selection and appointment of the Judges of High Court and that there are absolutely no merits in the writ petitions. It is also stated that all the particulars pertaining to the incumbents, including the objections raised by the petitioner and others, were taken into account and they have been appointed as Judges of High Court.

11. The writ petitions were filed at a time when the process of consultation for appointment of incumbents as Judges of High Court, was in progress. As a matter of fact, the petitioner filed miscellaneous petitions, with a prayer to direct the 1st respondent not to consider the recommendation of respondents 2 to 4 for their appointment. When the writ petitions were pending admission, the incumbents were administered oath and they assumed office. Therefore, the petitioner filed miscellaneous petitions with a prayer to permit him to amend the writ petitions, to incorporate the prayer for issuance of writs of quo warranto and for quashing appointments of the incumbents. The petitioner and the learned Advocate General addressed arguments on this aspect also. Therefore, the writ petitions as well as the miscellaneous petition are heard together.

12. The petitioner made several efforts and instituted proceedings before this Court and the Supreme Court, to thwart the appointment of the incumbents as Judges of this Court. The reason pleaded by him is that the process of consultation provided for under clause (1) of Article 217 of the Constitution of India was not followed strictly, in their case. He contends that though at one stage, the names of the incumbents were recommended, the Supreme Court and the Government of India returned the recommendation, in view of the objections raised from various quarters, and even when the names of the incumbents were recommended for the second time along with that of 14 others, the panel was returned once again, and despite the same, their names were recommended for third time; and ultimately, they came to be appointed. The defect in the consultation process urged by the petitioner is not about the constitution of the respective bodies, but on the ground that certain facts, which are referable to the incumbents and the personal life of one of them, were not taken into account.

13. The office of a Judge of High Court is treated with utmost dignity having regard to the nature of functions, which are required to be discharged by, and powers conferred, upon the persons holding it. Even under the dispensation, that preceded the Constitution of India, utmost protection was given to the office of the Judges of the Supreme Court (Federal Court) and the High Courts.

14. Article 217 of the Constitution of India, which provides for appointment of Judges of High Court reads:

217. Appointment and conditions of the office of a Judge of a High Court

(1) 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 Provided that

(a) a Judge may, by writing under his hand addressed to the President, resign his office;

(b) a Judge may be removed from his office by the President in the manner provided in clause (4) of Article 124 for the removal of a Judge of the Supreme Court;

(c) the office of a Judge shall be vacated by his being appointed by the President to be a Judge of the Supreme Court or by his being transferred by the President to any other High Court within the territory of India

(2) A person shall not be qualified for appointment as a Judge of a High Court unless he is a citizen of India and

(a) has for at least ten years held a judicial office in the territory of India; or

(b) has for at least ten years been an advocate of a High Court or of two or more such Courts in succession;

(3) If any question arises as to the age of a Judge of a High Court, the question shall be decided by the President after consultation with the Chief Justice of India and the decision of the President shall be final.

(Explanation (a), (aa) and (b) omitted, since it is felt unnecessary for the purpose of this case)

15. What would constitute the "process of consultation" was the subject-matter of interpretation by the Supreme Court in *S.P. Gupta Vs. President of India and Others*, and various other cases, such as *Supreme Court Advocates-on-Record Association and another Vs. Union of India*, The process of consultation, which used to be between the Chief Justice of the High Court and the Executive wing of the State, was interpreted as the one to mean the consultation among the Chief Justice and two Senior most Judges of the High Court constituting Collegium, and forwarding the result of consultation to the Chief Minister.

16. The justiciability of the recommendation of the name of a person for being appointed a Judge of the High Court, on the one hand, and the order of appointment as such, were dealt with by the Supreme Court in several cases. Recently, the Supreme Court in *Mahesh Chandra Gupta Vs. Union of India (UOI) and Others*, , examined the matter in detail. Their Lordships maintained distinction between the "eligibility", on the one hand, and "suitability", on the other hand, of an individual to be considered for appointment of a Judge of High Court. Clause (2) of Article 217 of the Constitution of India deals with the "eligibility", whereas clause (1) thereof pertains to the "suitability". It was held that the aspect of "eligibility" of an individual to be considered the Office is very much within the purview of judicial review, but "suitability" is not amenable to such scrutiny. In *Shri Kumar Padma Prasad Vs. Union of India and others*, the Supreme Court did interdict the appointment of the individual as a Judge of High Court, on finding that he was not qualified, and thereby, not eligible.

17. The justiciability of the appointment of Judge of High Court once made, virtually becomes prohibited. The reason is that the tenure of a Judge, on being

appointed, gets protected, till he attains the age of superannuation, or submits resignation. The only involuntary cessation of a Judge of High Court from the Office can be through impeachment, as provided for under Article 124(4) & (5) read with Article 217(1)(b) of the Constitution of India if successfully carried out. The provision reads:

124 (4) A judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehavior or incapacity.

(5) Parliament may by law regulate the procedure for the presentation of an address and for the investigation and proof of the misbehavior or incapacity of a Judge under clause (4)

18. No instance of the appointment of a Judge of the Supreme Court or High Court having been set aside, in a writ petition, is brought to our notice.

19. Few weeks before the writ petitions were taken up for hearing, the Supreme Court delivered the Judgment in *M. Manohar Reddy v. Union of India* (W.P. (Civil) No. 174 of 2012). Their Lordships dealt with a writ of quo warranto challenging the appointment of a Judge of this Court. After referring to the relevant provisions of law, the precedents and facts of that case, Their Lordships dismissed the writ petition, by imposing heavy costs. The circumstances under which a writ of quo warranto can issue in relation to the appointment of a Judge of High Court were explained by Their Lordships in para 40, as under:

In case it comes to light that some material facts were withheld by the person under consideration or suppressed at his behest then that may be a case of fraud that would vitiate the consultative process and consequently the appointment resulting from it. But in case there was no suppression and the fact comes to light a long time after the person appointed has assumed the office of a judge and if the Members of the two Houses of the Parliament consider the discovered fact sufficiently serious to constitute misbehavior and to warrant his removal, then he may still be removed from office by taking recourse to the provisions of Article 124(4) or Article 217 read with Article 124(4) as the case may be. In case, however, the fact was unknown and there was no suppression of that fact, a writ of quo warranto would certainly not lie on the plea that the consultative process was faulty.

20. Now, let the present case be tested, on the touch stone of the principles laid down by the Supreme Court on the subject.

21. The appointment of the Judge of High Court is a compendious process. It involves various stages. It is in the form of invitation of an individual, fulfilling the conditions of eligibility and found suitable for the office to adorn the Bench,

than appointment in the ordinary parlance. As and vacancies are found to be existing, the process of consultation is undertaken and after the Collegium agrees upon the individual or individuals, to be considered for appointment of judges, a request is made to them, to submit their particulars in the stipulated form. While in the consultation process, the members of the Collegium will make their own effort to know about the eligibility, suitability and desirability of the concerned individual from various angles, the particulars furnished by such individual on being requested, would provide another occasion and constitute the basis to verify as to whether there exist any factors that disable him from being considered. Once the recommendation reaches the superior authorities in the process, further verification from different angles is undertaken. It is only on being cleared at various stages that the person comes to be appointed as Judge of the High Court.

22. There are quite large number of instances where the proposals once initiated but did not fructify even in respect of persons regarding whom, there cannot be any second opinion as to their eligibility or suitability.

23. The petitioner is correct in his statement that the names of the incumbents herein were included in the panel of four names, in the year 2009 and that the same has been returned. It is also true that their names were included in the panel of 14 names, forwarded to the concerned authorities on 29.04.2011. From the records that are made available to us, it is evident that the panel of 14 names was returned by the Ministry of Union of India through a covering letter, dated 22.11.2011. The observations made in respect of the two incumbents are substantially different from those that were made as regards the rest of the 12. That obviously enabled the Collegium to recommend the names of the incumbents, through letter, dated 09.02.2012, after the Collegium cleared them on 08.02.2012. That ultimately resulted in their appointment as Judges of this Court.

24. The ground pleaded by the petitioner mostly relates to the personal life of the 5th respondent in PIL. No. 227 of 2012. If, in fact, there is anything, which renders him not suitable, and the Collegium or other authorities involved in the process were not aware of it, the observations made by the Supreme Court in Manohar Reddy's case would certainly become applicable.

25. In the marathon consideration of the said incumbent at various stages, and on different occasions, every facet of his life was put under the lens. As a matter of fact, at one stage, the Chief Justice of this Court called for a report as to whether any irregularity has crept into the legal proceedings, in relation to the matrimonial matters of the incumbent. It was on perusal of the report, that the other steps were taken.

26. While maintaining delicate balance between the "eligibility", on the one hand, and "suitability", on the other hand, their Lordships of the Supreme Court observed "once there is consultation, the content of that consideration is beyond

the scope of judicial review". This was hyphenated with another observation; viz., "lack of effective consultation would fall within the judicial review."

27. The expression "effective consultation" needs to be understood from the point of view of composition of the concerned agencies as well as the nature of consultation. It may be as to whether the relevant material was placed before the agency. It is not the complaint of the petitioner that there was any defect as to constitution of the consulting agency. The grievance if at all, is that the Collegium or other agencies, did not take the matters pertaining to the incumbents into account. Once it is found that various facts relating to the incumbents, which are mentioned in the writ petitions and the representation made by the petitioner, were before the Collegium and other agencies and they have formed an opinion, the verification by this Court, in the judicial review cannot go beyond that. The petitioner cannot be permitted to argue that the Collegium or other authorities ought to have taken a different view, on the available facts and circumstances, even if such a different view is possible. The distinction maintained by the constitutional Courts, between the decision making process on the one hand and the decision on such, on the other hand by an authority vested with the power, is too manifest, if not amplified, in matters of this nature.

28. In the context of suitability to the office of Judge of High Court, the appointing authority takes into consideration, the factors such as integrity, independent thinking, impartiality, knowledge in the law, capacity to handle the difficult situations that may arise in the course of adjudication, purity of life, commitment to the constitution, inclination to protect the integrity of the nation, and the like, while considering an individual for that office. It is too difficult to standardize these requirements, or for that matter, the process, in general. In a given case the existence of some of the requirements in abundance in an individual may convince the authority to condone little deficiency on other aspects, subject to its being at least to the minimum level. What constitutes minimum, is once again subjective, depending upon the approach of the concerned authority.

29. It is also necessary to keep in mind that the opinion of the authority at a particular level in the process, or its individual members is not final. Several other stages, the matter has to pass through and the authorities at each stage have the power to Veto and undo the whole progress, a given case has recorded. In a way method is more stringent, when compared to the appointment to executive post, through selection committees. When law concedes a fairly large degree of freedom to a selection committee and almost galvanizes the decision, once the decision making process is found to be in order, it is impermissible to make any attempt to peep into what transpired in the context of examining the suitability of a person for the office of Judge of High Court, once his eligibility is not in doubt.

30. This may appear to be conferring unbridled power upon the appointing

authority. However, if one takes into account, the nature of functions ascribed and attached to the office, the concession is worth giving. In fact, any deviation in this regard may take away the very sheen of the high office. Rare instances of the expectation or assessment of the appointing authority, turning out to be incorrect, deserve to be ignored as aberration, than being treated as part of the system. Any attempt to present the aberration as representing the system and thereby to make inroads into the system, may prove to be counter productive.

31. Therefore, the writ petitions are dismissed. There shall be no order as to costs.

32. All the miscellaneous petitions filed in these petitions shall also stand disposed of.

Nooty Ramamohana Rao, J.

PIL Nos. 227 & 228 of 2012

ORDER

33. I had the benefit of perusing the draft Judgment of my learned brother Justice L. Narasimha Reddy. While I concur with the opinion of my learned brother that these writ petitions deserve to be dismissed, but, however, I prefer to record reasons of my own.

34. Both these writ petitions are dealt with together, as the relief prayed for therein is identical, in that the petitioner a practicing advocate has sought for a Writ of Mandamus for declaring the selection and recommendation of the names of the respective 5th respondents made by the respondents 2, 3 and 4 for appointment as Judges of High Court of Andhra Pradesh as illegal.

35. At the very outset, the petitioner has set out clearly that, he has no ill-will against the respective fifth respondents, but he has instituted these writ petitions for espousing the cause of justice without any personal gain for himself or for any other political motive.

36. We have heard the writ petitioner for considerable length of time. It is contended by him that, respondents 2 to 4 are required to undertake a careful study of various attributes, professional as well as personal, before the name of a person is recommended for appointment as a Judge of High Court. It is therefore incumbent upon the respondents 2 to 4 to focus their consideration with regard to the intellectual capacity, integrity, sound knowledge of law, tact and temper of the individual and the judicious approach to the subject by the individual and the manner of presentation of cases by bearing an appropriate conduct by the said individual. It is also contended that, instead of exercising a careful study of all the relevant parameters and then making a recommendation, the respondents have preferred to nominate the respective fifth respondents to the high office of the Judge of this Court. According to the writ petitioner, there is an indivisible correlation between personal integrity and institutional integrity. According to the

petitioner, it is where the respondents 2 to 4 have failed to make a proper and careful assessment about the integrity component of the respective fifth respondents.

37. According to the writ petitioner, the name of the fifth respondent in W.P. No. 227 of 2012 was recommended on 08.09.2009 by the then Chief Justice of High Court of Andhra Pradesh, along with three other names and that the petitioner along with 33 other advocates, have submitted a representation on 07.10.2009 to the Hon'ble Chief Justice of India, requesting the latter to reject the recommendation of the Chief Justice of Andhra Pradesh High Court and that he followed it up by instituting W.P. No. 264 of 2010, which was considered by a Division Bench of this Court and that based upon the information furnished by the learned Advocate General that the recommendations made by the Chief Justice of High Court of Andhra Pradesh were returned by the Government of India, the Division Bench had dismissed W.P. No. 264 of 2010 on 29.04.2011, but however, the very next day the Chief Justice of High Court of Andhra Pradesh recommended the names of 14 advocates for appointment as Judges of Andhra Pradesh High Court including once again the names of the respective fifth respondents and that he has instituted writ petition (civil No. 314 of 2011) before the Supreme Court of India, challenging the recommendations made by the Chief Justice of Andhra Pradesh on 29.04.2011 for appointment of 14 advocates as Judges and that the said writ petition was dismissed by the Supreme Court on 23.08.2011 without considering the matter on merits, inasmuch as, yet another writ petition instituted by another advocate against the very same recommendations was earlier dismissed by the Supreme Court. It is contended that the reason for return of the earlier recommendations made by the Chief Justice were not made known to anyone and that after the new incumbent Chief Justice of Andhra Pradesh High Court started functioning as such, sent up proposals during February 2011, for appointment of the respective fifth respondents as Judges of Andhra Pradesh High Court and hence the present writ petition is instituted once again.

38. According to the petitioner, recommending for the third time, the name of the fifth respondent in W.P. No. 227 of 2012 when it was rejected earlier is impermissible under the Constitution of India. It would also raise an important question as to whether all the relevant factors required to be considered for purpose of selection and appointment of a person as a Judge of the High Court have gone into or not. More importantly, whether it was properly considered by the committee or not as to whether the fifth respondent in W.P. No. 227 of 2012 possesses unimpeachable character and moral integrity and as to whether he can be considered as suitable to be appointed as a Judge of the High Court as the fifth respondent has a disturbed marital life. I would consider it appropriate to extract the following pleadings from paragraph 20 of the affidavit filed in support of W.P. No. 227 of 2012.

20. It is respectfully submitted that the 5th respondent has not an

unimpeachable character, integrity, moral and professional ethics and has no respect to the institution of marriage. He has a disturbed marital life as he got married and divorced twice and living with another lady. As such the 5th respondent got divorced from his first wife by a decree of mutual consent based on a flimsy ground that he and his wife have different attitudes towards life and their expectations from life are different.....

39. Essentially, the petitioner is focusing his energies and attention on the aspects relating to assessment and suitability of the respective 5th respondents for appointment as a Judge of the High Court.

40. The conceptual principles relating to eligibility and suitability for appointment of a person as a Judge of the High Court fell for consideration in Mahesh Chandra Gupta Vs. Union of India (UOI) and Others, before the Supreme Court. The Supreme Court pointed out that the eligibility of a person for appointment as a Judge of High Court was essentially based on objective facts and factors and hence, it is amenable to judicial review, while the aspects relating to the suitability of a person for appointment as a Judge pertained to the realm of considered opinion and therefore not amenable to any judicial review. The Supreme Court has clearly pointed out that, the process of judging the fitness of a person to be appointed as a High Court Judge falls in the realm of assessment of suitability and the process of consultation amongst various constitutional institutions/agencies insulates such an assessment. The Supreme Court has pointed out that the dichotomy between suitability and eligibility is inbuilt and discernable when Article 217(1) is examined in juxtaposition to Article 217(2) of the Constitution itself. The Supreme Court therefore has pointed out that the eligibility of a person for appointment as Judge of the High Court being an objective factor based one, it could fall within the scope of judicial review. However, the question as to who should be appointed essentially involves the assessment of "suitability", which stands excluded from the purview of judicial review.

41. I, would consider it as absolutely profitable to extract the principle enunciated in the following paragraphs in Mahesh Chandra Gupta's judgment:

39. At this stage, we may state that, there is a basic difference between "eligibility" and "suitability". The process of judging the fitness of a person to be appointed as a High Court Judge falls in the realm of "suitability". Similarly, the process of consultation falls in the realm of suitability. On the other hand, eligibility at the threshold stage comes under Article 217(2)(b). This dichotomy between suitability and eligibility finds place in Article 217(1) in juxtaposition to Article 217(2). The word "consultation" finds place in Article 217(1) whereas the word "qualify" finds place in Article 217(2).

41. The appointment of a Judge is an executive function of the President. Article 217(1) prescribes the constitutional requirement of "consultation". Fitness of a person to be appointed a Judge of the High Court is evaluated in the consultation

process (see Basil's Commentary on the Constitution of India, Sixth Edition, p. 234). Once this dichotomy is kept in mind, then, it becomes clear that evaluation of the worth and merit of a person is a matter entirely different from eligibility of a candidate for elevation. Article 217(2), therefore, prescribes a threshold limit or an entry point for a person to become qualified to be a High Court Judge whereas Article 217(1) provides for a procedure to be followed before a person could be appointed as a High Court Judge, which procedure is designed to test the fitness of a person to be so appointed: his character, his integrity, his competence, his knowledge and the like.

43. One more aspect needs to be highlighted. "Eligibility" is an objective factor. Who could be elevated is specifically answered by Article 217(2). When "eligibility" is put in question, it could fall within the scope of judicial review. However, the question as to who should be elevated, which essentially involves the aspect of "suitability", stands excluded from the purview of judicial review.

44. At this stage, we may highlight the fact that there is a vital difference between judicial review and merit review. Consultation, as stated above, forms part of the procedure to test the fitness of a person to be appointed a High Court Judge under Article 217(1). Once there is consultation, the content of that consultation is beyond the scope of judicial review, though lack of effective consultation could fall within the scope of judicial review. This is the basic ratio of the judgment of the Constitutional Bench of this Court in the case of Supreme Court Advocates-on-Record Association and another Vs. Union of India, and Special Reference No. 1 of 1998, Re In Re: Appointment and Transfer of Judges,

71. "The overarching constitutional justification for judicial review, the vindication of the rule of law, remains constant, but mechanism for giving effect to that justification vary".

...Mark Elliott

"Judicial review must ultimately be justified by constitutional principle."

...Jowett

In the present case, we are concerned with the mechanism for giving effect to the Constitutional justification for judicial review. As stated above, "eligibility" is a matter of fact whereas "suitability" is a matter of opinion. In cases involving lack of "eligibility" writ of quo warranto would certainly lie. One reason being that "eligibility" is not a matter of subjectivity. However, "suitability" or "fitness" of a person to be appointed a High Court Judge: his character, his integrity, his competence and the like are matters of opinion.

74. It is important to note that each constitutional functionary involved in the participatory consultative process is given the task of discharging a participatory constitutional function, there is no question of hierarchy between these constitutional functionaries. Ultimately, the object of reading such participatory consultative process into the Constitutional scheme is to limit judicial review

restricting it to specified areas by introducing a judicial process in making of appointment(s) to the higher judiciary. These are the norms, apart from modalities, laid down in the case of Supreme Court Advocates-on-Record Association (supra) and also in the judgment in Re. Special Reference No. 1 of 1998 (supra). Consequently, judicial review lies only in two cases, namely, "lack of eligibility" and "lack of effective consultation". It will not lie on the content of consultation.

42. Mahesh Chandra Gupta's case has fallen for consideration once again before the Supreme Court in M. Manohar Reddy and Another Vs. Union of India (UOI) and Others, Supreme Today 563. The Supreme Court has approvingly quoted the principle enunciated in Mahesh Chandra Gupta's case and held in paragraph 39 as under:

39. The question, therefore, arises can a fact that is unknown to anyone be said to be not taken into consideration and can the consultative process faulted as incomplete for that reason. To our mind, the answer can only be in the negative. To fault the consultative process for not taking into account a fact that was not known at that time would put an impossible burden on the Constitutional Authorities engaged in the consultative process and would introduce a dangerous element of uncertainty in the appointments.

43. The learned Advocate General, at our request has made available the file leading to the appointment of the respective fifth respondents and we had perused the same very carefully.

44. The assertion of the petitioner that the name of the fifth respondent in W.P. No. 227 of 2012 was once before rejected, is factually not correct.

45. The apprehension entertained by the writ petitioner that some of the facts (considered as most relevant and vital by him and few other advocates, specifically adverted to by them in their representations) have not been specifically addressed by the collegium is also not correct. In fact, we found that a detailed inquiry was got conducted into the matter and based upon the inputs and after careful verification, the collegium had made its recommendations. It is therefore manifestly clear that the apprehensions aired by the petitioner have not escaped the focus and attention they deserved. After very careful study and scrutiny of all relevant records, the collegium had been satisfied that there was nothing against the fifth respondents which can even remotely disentitle consideration of the respective fifth respondent's case for appointment as a Judge of the High Court.

46. In view of these findings, I am unable to subscribe to the contention canvassed by the petitioner that there was lack of effective consultation in the matter of appointment of the respective fifth respondents in these writ petitions.

47. Mercifully, there was never any doubt about the eligibility of the respective fifth respondents. Since the issue relating to their suitability for appointment

being the value component of an assessment by the collegium, I am afraid, it is out of bounds for judicial review.

48. I have therefore no hesitation to dismiss these two writ petitions, but however, without costs.

L. Narasimha Reddy and Nooty Ramamohana Rao, JJ.

P.I.L.M.P. Nos. 332 & 333 of 2012 and P.I.L. Nos. 227 & 228 of 2012

COMMON ORDER

Through separate judgments, both of us have arrived at the same conclusions viz., that the writ petitions deserve to be dismissed. We accordingly hold that the writ petitions be dismissed.