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G. Kumarasamy Vs. the Union of India (Uoi) and 3 ors.

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Court : Chennai

Decided On : Dec-18-1996

Reported in : 1997(3)CTC437

Judge : Thanikkachalam and ;N.V. Balasubramanian, JJ.

Acts : Constitution of India - Articles 217 and 226

Appeal No. : W.A. No. 1132 of 1996 and C.M.P. No. 16734 of 1996

Appellant : G. Kumarasamy

Respondent : The Union of India (Uoi) and 3 ors.

Advocate for Def. : R. Viduthalai, Addl. Govt. Pleader (W) on behalf of Respondents 2

Advocate for Pet/Ap. : Vedantham Srinivasan, Adv. for ;V. Sivakumar, Adv.

Disposition : Appeal dismissed

Judgement :
ORDER

Thanikkachalam, J.

1. The petitioner in W.P. No. 16042 of 1996 is the appellant herein. The appellant herein filed the aforesaid writ petition for a writ of mandamus to forbear the first

respondent herein from issuing a warrant of appointment, appointing the fourth respondent herein as a Judge of the High Court of Judicature at Madras and pass such other further orders as may be necessary in the circumstances of the case. After hearing the learned counsel appearing for the petitioner and on going through the records, the learned Single Judge of this Court, thought fit to dismiss the writ petition even at the admission stage. It is against that order the present writ appeal has been preferred by the appellant herein.

2. The main contention of Mr. Vedantham Srinivasan, learned counsel appearing for the appellant, was that having regard to the materials placed on record, the fourth respondent could not have been considered fit for appointment as a Judge of this Court. According to the learned counsel, there are records to show that the fourth respondent trespassed into the property of the appellant, in spite of the decree granted against him and the appellant is now seeking his remedy through execution proceedings. It was submitted that the fourth respondent was directed to pay a sum of Rs. 50,000 as compensation to the appellant by the learned single Judge of this Court. However, the order of the learned single Judge of this Court, awarding compensation of Rs. 50,000 was set aside by the Division Bench of this Court. The learned counsel further submitted that the fourth respondent violated the rules prescribed by the M.M.D.A., and he has been regularly paying a fine periodically. According to the learned counsel, if all the materials relating to the fourth respondent herein were placed before the concerned Constitutional Authorities, the fourth respondent would not have been considered for appointment of a Judge of this Court. The fourth respondent is one of the senior most District Judge in the State Judiciary.

3. The learned counsel further submitted that it is beyond controversy that merit selection and candidates to be selected must possess high integrity, honesty, skill high order of emotional stability, firmness, serenity, legal soundness, ability and endurance. Besides the above, the halmarks of the most important personal qualifications required are moral vigour, ethical firmness and imperviousness to corrupting or venal influences, humility and lack of affiliations, judicial temperament, zeal, capacity to work. According to the learned counsel, Article 124(1) and Article 217(1) of the Constitution of India provide that the appointment

under the said provisions shall be made after consultation with the Chief Justice of India and others. Under Article 217(1) 'Consultation' is with three constitutional functionaries, viz., the Chief Justice of India, the Governor and the Chief Justice of the concerned High Court. Before the appointments are made to the superior judiciary, the concept of compulsory consultation is introduced in the constitution. In the present case, according to the learned counsel, if all the materials relating to the fourth respondent are placed before the constitutional functionaries, the fourth respondent would not be considered for appointment as a Judge of this Court. The learned counsel further submitted that the records from the constitutional functionaries may be called for in order to verify whether such consultation was done in accordance with the provisions contained in the Constitution of India. In short, the learned counsel requested this Court to verify whether the fourth respondent is appointed as a Judge of this Court, by observing all the conditions prescribed in the decision of the Supreme Court in Supreme Court Advocates-on-Record Association v. Union of India, : AIR 1994 SC268 .

4. Since it is a public interest litigation, Mr. R. Viduthalai. learned Advocate, while supporting the order passed by the learned single Judge, submitted that the fourth respondent herein fully satisfied the conditions required for appointment as a Judge of this Court, and according to him, at this stage, it cannot be said that proper consultation was not made by the constitutional functionaries, as enshrined under the relevant provisions of the Constitution of India.

5. The appellant herein filed this writ appeal and the writ petition as a citizen of India by way of public interest litigation. It remains to be seen that 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 Supreme Court as well as the High Courts. In the matter relating to appointments in the High Courts, 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 concerned High Court. The Chief Justice of India may also ascertain the views of one or more senior Judges of that High Court whose opinion, according to the Chief Justice of India, is likely to be significant in the formation of his opinion. 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 Supreme Court and the High Courts. In order to ensure effective consultation between all the constitutional functionaries involved in the process, the reasons for disagreement, if any must be disclosed to all others, to enable reconsideration on that basis. All consultations with everyone involved, including all the Judges consulted, must be in writing and the Chief Justice of the High Court, in the case of appointment of a High Court, and the Chief Justice of India, in all cases, must transmit with his opinion the opinions of all judges consulted by him, as a part of the record. Expression of opinion in writing is an in built check on exercise of the power, and ensures due circumspection. Exclusion of justificiability, as indicated hereafter, in this sphere should prevent any inhibition against the expression of a free and frank opinion. The final opinion of the Chief Justice of India, given after such effective consultation between the constitutional functionaries has primacy in the matter indicated.

6. It was represented in Court that the appellant herein has sent several representations to various Authorities giving information for rejecting the candidature of the fourth respondent as the Judge of this Court. We were also informed that several other persons also moved the Apex Court, touching this aspect, but those proceedings were said to be dismissed as withdrawn. Even in the affidavit filed by the appellant herein he never said that all the information, which he has now furnished, were not placed before the constitutional functionaries in the matter of rejecting the fourth respondent as a candidate for the appointment of a Judge of this Court. Now at this Stage, it is represented that the appointment of the fourth respondent as a Judge of this Court is under consultation among the constitutional functionaries. At one stage, the learned counsel appearing for the appellant, submitted that the matter is now pending before the President of India for his signature. Therefore, on the date of hearing on this writ Appeal the fact remains that we do not know exactly at what stage the matter is pending now. It also cannot be said that the constitutional functionaries would not have adhered to the constitutional provisions provided in the matter of appointment of a Judge of the High Court as stated in the decision of the Supreme Court in : AIR 1994 SC268 cited supra. Hence, it is not possible for us at this stage either to call for the records or to say that the constitutional functionaries did not

perform their constitutional responsibilities in the matter of consultation. The writ proceedings, according to us, is premature in nature as on date of hearing of this Writ Appeal.

7. In the matter of providing inbuilt check to curtail arbitrariness in the matter of appointment of Judges, the Supreme Court in Supreme Court Advocates-on-Record Association v. Union of India, : AIR 1994 SC268 pointed out in paragraph 502 as under: -

'The primacy of the Judiciary in the matter of appointments and its determinative nature in transfers introduces the Judicial Element in the process, and is itself a sufficient justification for the absence of the need for further judicial review of those decisions, which is ordinarily needed as a check against possible executive excess or arbitrariness. Plurality of Judges in the formation of the opinion of the Chief Justice of India, as indicated, is another inbuilt check against the likelihood of arbitrariness or bias, even subconsciously, of any individual. The judicial element being predominary in the case of appointments, and decisive in transfers, as indicated, the need for further judicial review, as in the executive actions, is eliminated. The reduction of the area of discretion to the minimum, the element of plurality of Judges in formation of the opinion of the Chief Justice of India, effective consultation in writing and prevailing norms to regulate the area of discretion are sufficient checks against arbitrariness.'

8. Further the Supreme Court, in the abovesaid decision, in paragraph 504 held as under:-

'...The growing tendency of needless intrusion by strangers and busy bodies in the functioning of the Judiciary under the grab of public interest litigation, in spite of the caution in S.P. Gupta, : [1982]2SCR365 while expanding the concept of locus standi, was adverted to recently by a Constitution Bench in Raj Kanwar Advocates v. Union of India, : AIR 1993 SC1407 . It is therefore, necessary to spell out clearly the limited scope of Judicial review in such matters, to avoid similar situations in future. Except on the ground of want of consultation with named constitutional functionaries or lack of any condition of eligibility in the case of an appointment, or of a transfer being made without the recommendation of the Chief Justice of India,

these matters are not justiciable on any other ground, including that of bias, which in any case is excluded by the element of plurality in the process of decision making.'

9. In view of the foregoing facts, neither for want of consultation with the named constitutional functionaries, nor in the ground of lack of any condition of eligibility in the case of appointment, this Court can interfere with the order passed by the learned single Judge in dismissing the writ petition. Accordingly, this writ appeal is dismissed. On the date of pronouncing this Judgment, we came to know that the warrant of appointment appointing the fourth respondent as a Judge of this Court was issued by the President of India on 17.12.1996. In view of the above, this Writ Appeal also becomes infructuous. Since the writ appeal itself is dismissed, C.M.P. No. 16734/96 is also dismissed.

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