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IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
SANJAY KISHAN KAUL; J., AHSANUDDIN AMANULLAH; J., ARAVIND KUMAR; J.
May 12, 2023.
M.A. Nos. 709/2022, 1502/2020; IA Nos.58694/2022, 74393/2020, 75687/2021 In WRIT PETITION (C) NO. 454 OF 2015
MS. INDIRA JAISING *versus* **SUPREME COURT OF INDIA, THROUGH SECRETARY GENERAL**

Senior Advocate Designation – Guidelines modified - Process should be done at least once a year - Reduces points assigned for publication; expands its scope to include teaching assignments and guest lectures - No strict age bar of 45 years for senior designation, but only exceptional advocates be designated below this age - Legal Profession no longer a family profession; newcomers must be encouraged - Role played by lawyers in cases to be assessed than counting mere appearances.

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J U D G M E N T

SANJAY KISHAN KAUL, J.

History and rationale for designation of Senior Advocates in India:

1. The practice of having a distinguished class of senior pleaders with considerable status and experience in India can be traced back to legal practice in the United Kingdom. This category is said to have originated in the 13th century, as a distinguished class of senior pleaders known as Serjeants-atLaw. In the 18th century, selection in another such category, known as King's/Queen's Counsel became a matter of honour and a recognition of professional eminence.

2. The designation of Senior Advocates in India is a privilege awarded as a mark of excellence to advocates who have distinguished themselves and have made a significant contribution to the development of the legal profession. It identifies advocates whose standing and achievements would justify an expectation on the part of the clients, the

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judiciary, and the public, that they can provide outstanding services as advocates in the best interest of the administration of justice.

3. Presently, the designation of Senior Advocates in India is provided by Section 16 of the Advocates Act, 1961 (hereinafter referred to as the '***Advocates Act'***), wherein advocates are classified in two categories, namely as a 'Senior Advocate' and 'Advocate'.

Criteria for designation of Senior Advocates over the years:

4. Under Section 16(2) of the Advocates Act, the Supreme Court and the High Court have the power to designate an advocate as a Senior Advocate with his consent. In the case of the Supreme Court, this power is provided in Rule 2 of Order IV of the Supreme Court Rules, 2013.

5. Before the introduction of the Advocates (Amendment) Act, 1973 (hereinafter referred to as the '***Amendment Act***'), the criteria for designation as Senior Advocate was based on "ability, experience and standing at the Bar". Pursuant to the Amendment Act, this criterion was then changed to "ability, standing at the Bar or special knowledge or experience in law". Therefore, the higher judiciary in India has the sole discretion to designate an advocate as a Senior Advocate based on such parameters.

6. With regard to the High Court, there was no uniform criteria and different High Courts in the country had different criterion for designation of Senior Advocates.

7. In the Supreme Court, the applications for Senior Advocates were subject to deliberation by the Full Court and were put to vote through secret ballots. Therefore, the designation was not based on any objective criteria.

The 2017 Judgment:

8. Ms. Indira Jaising, Senior Advocate, filed a writ petition under Article 32 of the Constitution of India in 2015. She submitted that the existing system of designation of Senior Advocates was flawed as it was not objective, fair, and transparent, and thus did not take into account considerations of merit and ability. She *inter alia* sought the system of voting to be abandoned and to be replaced by a permanent Selection Committee. At this stage, we may note that the petitioner did not press for Section 16 of the Advocates Act or Rule 2 of Order IV of the Supreme Court Rules, 2013 to be declared unconstitutional.

9. Vide an elaborate judgment dated 12.10.2017, a three Judge Bench of this Court laid down a series of guidelines to bring in greater transparency and objectivity in the designation process.[1] This was done while retaining the *suo motu* designation power of the Court. These guidelines have been set forth in paragraph 73 of the judgment. These *inter alia*, provided for the constitution of a Permanent Committee consisting of five Members, to be headed by the Chief Justice and two senior-most Judges. The Attorney General/Advocate General of the State was also to be a Member of this Committee. In order to provide further representation, the fifth Member was to be nominated from the Bar by the aforementioned four Members of the Permanent Committee. The Permanent Committee was empowered to assess applications on the basis of a point based format, as is provided below:

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[1] Indira Jaising v. Supreme Court of India through Secretary General and Others, (2017) 9 SCC 766 (hereinafter referred to as the '**2017 Judgment'**).

"**73.7**. The Permanent Committee will examine each case in the light of the data provided by the Secretariat of the Permanent Committee; interview the advocate concerned; and make its overall assessment on the basis of a point based format indicated below:

Sl. No.	*Matter*	*Points*
1.	Number of years of practice of the applicant advocate from the date of enrolment. [10 points for 10-20 years of practice; 20 points for practice beyond 20 years]	20 points
2.	Judgments (reported and unreported) which indicate the legal formulations advanced by the concerned advocate in the course of the proceedings of the case; pro bono work done by the advocate concerned; domain expertise of the applicant advocate in various branches of law, such as Constitutional law, Inter-State Water Disputes, Criminal law, Arbitration law, Corporate law, Family law, Human Rights, Public Interest Litigation, International law, law relating to women, etc.	40 points
3.	Publications by the applicant advocate	15 points
4.	Test of personality and suitability on the basis of interview/interaction	25 points

10. The 2017 Judgment was thereafter given effect by the Supreme Court Guidelines to Regulate Conferment of Designation of Senior Advocates, 2018 (hereinafter referred to as the '***2018 guidelines***').

11. In paragraph 74 of the 2017 Judgment, this Court noticed that the guidelines enumerated may not be exhaustive and may require reconsideration by suitable additions/deletions in the light of the experience to be gained over a period of time. Thus, the Bench left it open for consideration by this Court at such point of time that the same may become necessary. The debate before us in the present applications is in this conspectus.

12. At this stage, we must note that the submissions pertaining to the criterion in Sl. No. 1 do not really survive in view of this Court's order dated 04.05.2022. The norms, as enumerated in the 2017 Judgment, required 10 points to be given for all advocates practicing between 10-20 years and 20 points for advocates practicing beyond 20 years. The result would be that an applicant with 11 years of practice and an applicant with 19 years of practice would get the same points in this criterion. In order to iron out this crease, this Court observed that under this category, one mark each shall be allocated for every year of practice between 10-20 years.

13. The issues remaining before us pertain to the manner of marking and the allocation of points at Sl. Nos. 2-4 in paragraph no. 73.7 of the 2017 Judgment. The debate before us is also over the manner of the exercise conducted for designation of Senior Advocates.

14. We thus proceed to set forth the headings under which different aspects have been debated and our views on the same.

Voting by Secret Ballot **:**

15. The method of designation prior to the 2017 Judgment, was by a discussion followed by voting by secret ballot from Judges of the Full Court. The percentage of approval required ordinarily varied from 2/3rd to 50%. In the 2017 Judgment, it was noticed that a secret ballot was supposed to be a rarity rather than the norm and may be used only under certain unavoidable circumstances.

16. Applicants before us submitted that designation through voting by secret ballot defeats the very purpose of setting up the Permanent Committee. There ought to be no need to resort to voting by secret ballot once a person scores marks above the cut off (if fixed). Further, despite the 2017 Judgment, the process of voting by secret ballot, which was meant to be used in exceptional circumstances, is frequently resorted to. Even where the assessment has been carried out by the Permanent Committee, the ultimate decision hinged on a vote by the Full Court. It was averred that the process of designation was meant to be a selection, and not an election.

17. In our view, the matter before us is in a limited compass. Our remit is to fine-tune the guidelines laid by this Court in the 2017 Judgment. The constitution of a Permanent Committee, reliance on certain objective criteria for assessment, and final decision through voting are the central aspects of the 2017 Judgment. Our remit does not extend to reviewing the same, but only to modifying the criteria through our experiences gained over a period of time.

18. We agree that the elaborate procedure carried out by the Permanent Committee would serve no purpose if the ultimate decision is taken by secret ballot. It has been found that even the applicants who were beyond the cut-off were at times put through a secret ballot. This has resulted in both the exclusion of people from the list prepared by the Permanent Committee and expansion of the list by further inclusion.

19. The aforesaid aspect has to be considered in the conspectus of the concept of 'Senior Designation'. This designation has always been held to be an honour conferred. While it is alleged that voting by secret ballot may not always subserve the interests of transparency, in practice judges may be reluctant to put forth their views openly. This is especially the case where the comments of a judge can have a deleterious effect on the advocate's practice.

20. Thus, we find merit in the contention that voting by secret ballot should not be the rule but clearly an exception. In case it has to be resorted to, the reasons for the same should be recorded.

***Cut-off Marks* :**

21. A grievance was raised that while the cut-off marks may have already been decided, the same are neither published in advance nor communicated to those applying for senior designation, thereby leading to speculation at the Bar. It was thus prayed that the cut-off marks be released in advance.

However, in the course of the oral submissions, a consensus emerged between the parties, and in our view rightly so, that it would be difficult to prescribe cut-off marks in advance. As designation is really an honour to be conferred, there can only be a limited number of successful applicants in one go. A decision on the number of successful applicants must be left to the Permanent Committee, depending on the total number of applicants, the marks obtained by them, and the number of people that can be invited for the personal interview.

22. We now turn our attention to the modifications suggested in the categories enumerated under paragraph 73.7 of the 2017 Judgment.

***The Points Assigned for Publications*:**

23. This aspect was debated with fairly divergent views. As per Ms. Indira Jaising, a designated Senior Advocate is not just someone who appears in Court. They are also

expected to contribute intellectually, and to the development of the law. She thus submitted that although the points under this category could be altered, they should not be abolished.

24. On the other hand, the Supreme Court Bar Association and others sought to contend that very few actively practicing advocates are able to devote time to writing books or articles. In any case, publications were not a reflection of advocacy skills. This is apart from the fact that it is often difficult to ascertain whether an article is written by an advocate themselves. It was also contended that it is difficult to objectively determine the quality of such publications.

25. We have considered the aforesaid aspect and find some merit on both sides. We find that the allocation of 15 points for publication is high, and thus we deem it fit to reduce the available points under this category to 5 points. Most practicing advocates find very little time to write academic articles. In any case, academic publications require a different aptitude. However, given that Senior Advocates are expected to make nuanced and sophisticated submissions, academic knowledge of the law is an important prerequisite. Thus, we would not like to do away with this criteria, but expand what should fall under this criteria, while reducing the points under this category.

26. We believe that confining these criteria merely to the authorship of academic articles would not be enough. Instead, it must also include teaching assignments or guest courses delivered by advocates at law schools. This would be a more holistic reflection of the advocate's ability to contribute to the critical development of the law. It also shows their interest in guiding and helping their peers at the Bar.

27. We can take a cue from our neighboring country Singapore, where Senior Counsel are recognized as an elite group of advocates, with top tier advocacy skills, professional integrity, and knowledge of law. Senior Counsels have a duty to leading and be an example to the rest of the Bar, especially younger members. They are also required to contribute to academic teaching, writing, and research, and to the process of continuing legal education.

28. Here, we would also like to add that the quality of writing by an advocate should be an important factor in allocating points under this category. We leave it to the Permanent Committee to decide on the manner of assigning points under this category, including the possibility of taking external assistance to gauge the quality of publications. This can be through other Senior Advocates or academics. We are conscious that this would increase the load of the Secretariat assisting the Permanent Committee, but that is inevitable.

Criteria under Sl. No. 2 on Account of Various Parameters:

29. This category becomes one of the most important as it contemplates reported and unreported judgments, *pro bono* work, and the domain expertise of an applicant under various branches of law.

30. We deem it fit to enhance the number of points under this category by 10 points, having deducted the same from Sl. No. 3, i.e. publications. We are also increasing the scope of this category.

31. The first aspect to be noticed under this head is that of reported and unreported judgments. We deem it fit to clarify that it is not orders (not laying down any proposition of law) but judgments that have to be considered. We say so as judgments ordinarily deal with significant and contested legal issues.

32. Here, we ought to also consider the role played by the advocate in the proceedings. In recent times, and particularly in the Supreme Court, the number of advocates present for a matter are very high. However, that is not *ipso facto* reflective of the assistance that they are providing to the Court. A matter may be argued by a counsel who may be assisted by others, including an Advocate-on-Record. Thus, an assessment would have to be carried out in enquiring into the role played by the advocate in the matter they have appeared in with their role specified by them in their application. Merely looking into the number of appearances would not be enough.

33. We believe that this would also take care of any perceived disadvantages arising due to the larger number of appearances by Government counsel, as compared to counsel who are engaged in private work.

34. One suggestion that we are inclined to accept is that while analyzing the role of lawyers, the quality of the synopses filed in Court ought to be considered. Synopses can be a useful indicator for assessing the assistance rendered by an advocate to the Court. Candidates should thus be permitted to submit five of their best synopses for evaluation with their applications.

35. Now turning to another aspect under this head, it may be noticed that many specialized tribunals have been set up, and several advocates have concentrated their practice before such tribunals. The specialized tribunals are the National Company Law Tribunal, Appellate Tribunal for Electricity, Appellate Tribunal under the Prevention of Money Laundering Act, 2002, Telecom Disputes Settlement and Appellate Tribunal, Consumer Dispute Redressal Commission, etc. This has led to the opening up of various specializations, including but not limited to arbitration, telecom, electricity, energy, competition, insolvency, and white-collar crime.

36. Often appeals from those tribunals lie to this Court and, thus, such advocates also appear before this Court, although the frequency of their appearances may be less. Specialised lawyers with domain expertise should be permitted to concentrate on their fields and not be deprived of the opportunity of being designated as Senior Advocates. Thus, in the case of such advocates, a concession is required to be given with regards to the number of appearances. This category of advocates and their expertise is also essential for the advancement of all specialized fields of law.

37. We also believe that due consideration should be given in the interest of diversity, particularly with respect to gender and first-generation lawyers. This would encourage meritorious advocates who will come into the field knowing that there is scope to rise to the top. The profession has seen a paradigm shift over a period of time, particularly with the advent of newer law schools such as National Law Universities. The legal profession is no longer considered as a family profession. Instead, there are newer entrants from all parts of the country and with different backgrounds. Such newcomers must be encouraged.

The Personal Interview:

38. The requirement of allocating 25 points in this category was debated. One of the criticisms against retaining this category was that it would delay the process of designation, keeping in mind the practical issue of interviewing a large number of candidates. Further, very little purpose would be served by an interview as the candidates were already being assessed by their appearances before the Court.

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39. We are conscious of the aforesaid criticisms. We believe that an interview process would allow for a more personal and in-depth examination of the candidate. An interview also enables a more holistic assessment, particularly as the Senior Advocate designation is an honour conferred to exceptional advocates. A Senior Advocate is also required to be very articulate and precise within a given timeframe, which are values that can be easily assessed during an interview.

40. It is in this spirit that we have sought to make the interview process more workable. We have thus restricted the number of interviews to the appropriate amount as deemed feasible by the Permanent Committee, keeping in mind the number of Senior Advocates to be designated at a given time.

41. As we have streamlined the process by restricting the number of interviews in the context of number of candidates to be designated, we believe a meaningful exercise can be carried out. Thus, we are not inclined either to do away with or to reduce the marks assigned under this category, especially in view of the fine-tuning we have done by the present order to make this exercise more meaningful.

Other General Aspects:

42. We may now turn to some general aspects which emerged during the oral submissions.

43. Presently, as per the 2018 Guidelines, the process of designation is to be undertaken twice a year, i.e. each year in the month of January and July. However, Mrs. Madhavi Divan, ASG, submitted that if the exercise has to be undertaken in the aforesaid elaborate form, it would be very difficult to undertake the process twice a year.

44. In this regard, we would only like to say that the process should be carried out at least once a year so that applications do not accumulate. In this respect, some disturbing instances have emerged from certain High Courts where the exercise of designation has not been undertaken for many years. As a consequence, meritorious advocates at the relevant time lose out on the opportunity of being considered for designation.

45. With respect to younger advocates, we would like to state that they are naturally not precluded from applying for designation, particularly as the 2018 Guidelines do not require anything more than ten years of practice. However, we believe that such advocates would have to display that extra bit of ability to be designated.

46. We must also say that the Supreme Court rests on a different footing as the highest court of the land. Although designations in the Supreme Court in comparison to High Courts have usually taken place at the age of 45 plus, younger advocates have also been designated. While we would not like to restrict applications only to advocates who are above 45 years of age, only exceptional advocates should be designated below this age. We say no more and leave this aspect to the wisdom of the Permanent Committee and the Full Court.

47. Here, we would like to reiterate the observation made in the 2017 Judgment that the power of *suo motu* designation by the Full Court is not something that is being taken away. This power has been and can continue to be exercised in the case of exceptional and eminent advocates through a consensus by the Full Court.

48. An endeavour was made by the Union of India to reopen the 2017 Judgment itself. That however is not our remit in the present applications. We are not at the stage of a review or a reference of the matter to a larger Bench. We are only on the aspect of fine-

tuning what has been laid down by this Court in the 2017 Judgment. It is also pertinent that the then Attorney General was present throughout the oral hearings that culminated in the 2017 Judgment. There is also the question of what the role of the Union can even be at this stage, particularly as the Bar Council of India, which is the representative body of the lawyers is being represented before us.

49. Lastly, we come to the aspect of the pending applications for designation. Once we have fine-tuned the norms, we cannot say that the pending applications will be considered under the old norms. The exercise to be undertaken now would have to include these existing applications. However, such candidates can be given the time to update or replace their applications in light of the norms laid down by the present judgment. We urge the Secretariat to process these applications expeditiously.

50. We only hope that our endeavour to simplify some aspects of the process results in the designation of more meritorious candidates. The process of improvement is a continuous one and we learn from every experience. This is one more step in the fine-tuning of this exercise and we hope it achieves the purpose. The ultimate objective is to provide better assistance to litigants and the Courts.

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