

2023 LiveLaw (SC) 519

IN THE SUPREME COURT OF INDIA

DR. D.Y. CHANDRACHUD, CJI; PAMIDIGHANTAM SRI NARASIMHA, J., MANOJ MISRA; J.

Writ Petition (Civil) No.699/2016; 11-07-2023

ASHWINI KUMAR UPADHYAY versus UNION OF INDIA & ANR.

Judicial Service – Transfer - The Supreme Court clarified that its permission is not required for the High Courts to transfer Presiding officers of Special Courts dealing with cases pertaining to MPs/MLAs. (Para 5)

Mr. Vijay Hansaria, Sr. Adv. (A.C.) Ms. Sneha Kalita, AOR Ms. Kavya Jhawar, Adv.

For Petitioner(s) Mr. Vikas Singh, Sr. Adv. Mr. Ashwini Kumar Upadhyay, Adv. Mr. Ashwani Kumar Dubey, AOR

For Respondent(s) Mr. Pranav Sachdeva, AOR Mr. Balaji Srinivasan, AOR Mr. Shiva Krishnamurthi, Adv. Mr. Tushar Mehta, SG Mr. K.M. Nataraj, ASG Ms. Sonia Mathur, Sr. Adv. Mr. V. Mohana, Sr. Adv. Mr. K. Parameshwar, Adv. Mr. Rajat Nair, Adv. Mr. Mohd Akhil, Adv. Mr. Apoorv Kurup, Adv. Mr. Arvind Kumar Sharma, AOR Mr. Sahil Tagotra, AOR Mr. Sidhant Kumar, Adv. Ms. Manyaa Chandok, Adv. Ms. Vidhi Udayshankar, Adv. Mr. Abhishek Pandey, Adv. Ms. Abhivyakti Banerjee, Adv. Mr. Shiv Ram Sharma, AOR Ms. K. Enatoli Sema, AOR Ms. Limayinla Jamir, Adv. Mr. Amit Kumar Singh, Adv. Ms. Chubalemla Chang, Adv. Mr. Prang Newmai, Adv. Mr. Nishant Kumar, Adv. Mr. Anupam Raina, AOR Mr. Anandh Kannan N., AOR Ms. G. Indira, AOR Mrs. Swarupama Chaturvedi, AOR Mr. Abhishek Atrey, AOR Mr. Ravindra Lokhande, Adv. Ms. Vidyottma Jha, Adv. Dr. Abhishek Atrey, Adv. Mr. Gaurav Agrawal, AOR Mr. Shuvodeep Roy, AOR Mr. Sai Shashank, Adv. Mr. Deepayan Dutta, Adv. Mr. Apoorv Kurup, AOR Ms. Kirti Dadheech, Adv. Mr. Akhil Hasija, Adv. Mr. Aravindh S., AOR Mr. S.C. Verma, Sr. Adv. Mr. Sumeer Sodhi, AOR Mr. Gaurav Arora, Adv. Mr. Sibho Sankar Mishra, AOR Intervenor-in-person Mr. Abhimanue Shrestha, AOR Mr. Nishe Rajen Shonker, AOR Mrs. Anu K Joy, Adv. Mr. Alim Anvar, Adv. Ms. Hemantika Wahi, AOR M/s. Gorkela Law Office Mr. Shantanu Sagar, AOR Mr. Prabhat Ranjan Raj, Adv. Mr. Sidharth Sarthi, Adv. Mrs. Divya Mishra, Adv. Mr. Anil Kumar, Adv. Mr. Gunjesh Ranjan, Adv. Ms. Priyadarshni Priya, Adv. Mr. Gautam Narayan, AOR Ms. Asmita Singh, Adv. Ms. Akriti Arya, Adv. Ms. Harshit Goel, Adv. Mr. Raghavendra S. Srivatsa, AOR Mr. Venkita Subramaniam T.R., Adv. Mr. Likhi Chand Bonsle, Adv. Ms. Komal Mundhra, Adv. Mr. Rahat Bansal, Adv. Mr. Tapeshe Kumar Singh, AOR Mr. Aditya Pratap Singh, Adv. Mr. Naresh K. Sharma, AOR Mr. Chirag M. Shroff, AOR Mr. Krishnam Mishra, Adv. Mr. Rajeev Kumar Dubey, Adv. Mr. Sudhakar Kulwant, Adv. Ms. Chandni Arora, Adv. Mr. Ashiwan Mishra, Adv. Mr. Kamendra Mishra, AOR Mr. Amit Anand Tiwari, A.A.G. Mr. Sabarish Subramanian, AOR Mr. Devyani Gupta, Adv. Mr. Vishnu Unnikrishnan, Adv. Mr. C Kranthi Kumar, Adv. Mr. Danish Saifi, Adv. Mr. Naman Dwivedi, Adv. Mr. Anil Shrivastav, AOR Mr. V.N. Raghupathy, AOR Mr. Manendra Pal Gupta, Adv. Mr. Md. Apzal Ansari, Adv. Mr. Pukhrabam Ramesh Kumar, AOR Mr. Karun Sharma, Adv. Dr. Manish Singhvi, Sr. Adv. Mr. Sandeep Kumar Jha, AOR Ms. Subhangi Agarwal, Adv. Mr. Arpit Prakash, Adv. Mr. Vikramjit Banerjee, ASG Mr. Shreekanth Neelappa Terdal, AOR Mr. K.V. Sreemuthin, Adv. Ms. Priyadarshini Priya, Adv. Mr. Saransh Kumar, Adv. Mr. Vishnu Jain, Adv. Dr. N. Visakamurthy, Adv. Mr. Ambhoj Kumar Sinha, AOR Mr. Ranjan Mukherjee, AOR M/s. Arputham Aruna & Co. Dr. Joseph Aristotle S., AOR Mr. Shailesh Madiyal, AOR Mr. Vaibhav Sabharwal, Adv. Mr. Akshay Kumar, Adv. Mr. Arjun Garg, AOR Mr. Aakash Nandolia, Adv. Ms. Sagun Srivastava, Adv. Mrs. Anil Katiyar, AOR Mr. Mahesh Thakur, AOR Ms. K.V. Bharathi Upadhyaya, AOR Mr. Mahfooz Ahsan Nazki, AOR Mr. Polanki Gowtham, Adv. Mr. T Vijay Bhaskar Reddy, Adv. Ms. Rajeswari Mukherjee, Adv. Ms. Niti Richhariya, Adv. Ms. Radhika Gautam, AOR Mr. Karan Bharihoke, AOR Mr. Satish Pandey, AOR Mr. Akbar Ali, Adv. Mr. Sadiya Shakeel, Adv. Mr. Shah Syad Samadur Rahman, Adv. Mr. Harendra Kumar Sharma, Adv. Mr. Atanu Mukherjee, Adv. Mr. Anirudh Bankura, Adv. Mr. Abdul Qadir, Adv. Mr. Malak Manish Bhatt, AOR Mr. Abhinav Mukerji, AOR Mr. Akshay C. Shrivastava, Adv. Mrs. Bihu Sharma, Adv. Ms. Pratishtha Vij, Adv. Mr. Sanjay Kumar Tyagi, AOR Mr. Sandeep Singh, Adv. Mr. Ajay Kumar Pandey, Adv. Mr. Sanjay Kumar, Adv. Mr. Mimansak Bhardwaj, Adv. Mr. Narendra Kumar, AOR Mr. Raghvendra Kumar, Adv. Mr. Anand Kumar Dubey, Adv. Ms. Rajlakshmi Singh, Adv. Mr. Sandeep Sudhakar Deshmukh, AOR Mr. Nishant Sharma, Adv. Mr. Tushar D. Bhelkar, Adv. Mr. Maibam Nabaghanashyam Singh, AOR Mr. Kumar Kartikey, Adv. Mr. Shakti K Pattanaik, Adv. Mr. Sunny Choudhary, AOR Mr. Karan Bishnoi, Adv. Mr. Kunal Chatterji, AOR Ms. Maitrayee Banerjee, Adv. Mr. Rohit Bansal, Adv. Ms. Kshitij Singh, Adv. Ms. Uttara Babbar, AOR Mr. Madhav Maira, Adv. Mr. Sameer Abhyankar, AOR Ms. Nishi Sangtani, Adv. Ms. Vani Vandana Chhetri, Adv. Ms. Sugandg Rathore, Adv. Mr. Anand Dilip Landge, Adv. Mr. Siddharth Dharmadhikari, Adv. Mr. Aaditya Aniruddha Pande, AOR Mr.

Bharat Bagla, Adv. Mr. Sourav Singh, Adv. Mr. Kabir Dixit, AOR Mr. P.V. Yogeswaran, AOR Mr. Ashok Mathur, AOR Ms. Jesal Wahi, AOR Mr. Sanjai Kumar Pathak, AOR Mr. Arvind Kumar Tripathi, Adv. Mrs. Shashi Pathak, Adv. Mr. Anandh Kannan N., AOR M/s. Plr Chambers & Co. Mr. Shovan Mishra, AOR Mr. B.K. Satija, AAG Mr. Lokesh Sinhal, Sr. AAG Mr. Samar Vijay Singh, AOR Mr. Nikunj Gupta, Adv. Mr. Keshav Mittal, Adv. Ms. Sabarni Som, Adv. Ms. Aswathi M.K., AOR Mr. Nishant Rao, Adv. Mr. E.C. Agrawala, AOR Mr. Sanjeev Kaushik, Adv. Mr. Shreyas Awasthi, Adv. Mr. Bhanu Mishra, Adv. Ms. Astha Sharma, AOR Mr. P.N. Ravindran, Sr. Adv. Mr. T.G. Narayanan Nair, AOR Ms. Swathi H. Prasad, Adv. Mr. P.S. Sudheer, AOR Mr. Vinod Ghai, Sr. Adv. Mr. Ajay Pal, AOR Mr. Prashant Manchanda, AAG Mr. Mayank Dahiya, Adv. Ms. Sugandh Rathor, Adv.

ORDER

1 By its order dated 10 August 2021, this Court directed, *inter alia*, that the Presiding officers of the Special Courts involving prosecution of MPs or MLAs, shall not be transferred except with the leave of this Court.

2 Several High Courts filed interlocutory applications seeking permission to transfer judicial officers due to administrative exigencies or on other grounds.

3 Subsequently, by an order dated 10 October 2022, this Court directed, *inter alia*, as follows:

“...henceforth it will not be necessary for the High Courts to seek prior permission of this Court for transfer of judicial officers where the transfers are made in the normal course consequent upon the end of their tenure in a particular posting. However, if a transfer is necessitated for any other reason, otherwise than in the normal course of transfers and postings pursuant to the policy of the High Court, the prior permission of this Court shall be deemed to be necessary in terms of the order dated 10 August 2021.”

4 A number of interlocutory applications have been filed by the High Courts seeking permission to transfer judicial officers.

5 In order to ensure that the administrative work of the High Courts does not suffer as a result of the delay occasioned in dealing with the interlocutory applications, we modify the orders dated 10 August 2021 and 10 October 2022 in the following terms:

(I) The permission of this Court shall not be required for transfer of Presiding officers of Special Courts dealing with cases pertaining to MPs/MLAs by the High Courts subject to due observance of the following conditions:

(i) The High Court concerned may transfer the Presiding officers of Special Courts - MPs/MLAs after obtaining the approval of the Chief Justice of the High Court on the administrative side;

(ii) While granting permission, the Chief Justice shall ensure that some other judicial officer is posted in the vacancy which would be caused by the transfer so that the Special Court in charge of cases of MPs/MLAs is not kept vacant; and

(iii) The transfer shall be permitted subject to the condition that there is no case pending for final judgment after the conclusion of the arguments in the trial.

6 The following interlocutory applications which have been moved by the High Court of Judicature at Allahabad are accordingly allowed by permitting the transfer of the judicial officers subject to the above conditions:

(i) IA No 100245 of 2023;

(ii) IA No 102773 of 2023; and

(iii) IA No 111768 of 2023

7 Similarly, the following interlocutory applications filed by the Madras High Court are allowed by permitting the transfer of the judicial officers subject to the above conditions:

(i) IA No 118900 of 2023; and

(ii) IA No 123776 of 2023