

[2022 LiveLaw \(SC\) 949](#)

IN THE SUPREME COURT OF INDIA
SANJAY KISHAN KAUL; J., ABHAY S. OKA; J.,
CONMT.PET.(C) No. 867/2021 in T.P.(C) No. 2419/2019; 11-11-2022
THE ADVOCATES ASSOCIATION BENGALURU versus BARUN MITRA & ANR.

Summary: - Supreme Court makes critical remarks against the Union Government over delay in clearing names reiterated by the Collegium.

Judicial Appointments - Once the Government has expressed its reservation and that has been dealt with by the Collegium, post second reiteration, only the appointment has to take place. Thus keeping the names pending is something not acceptable.

Judicial Appointments - Supreme Court criticises Centre keeping the recommendations pending - We find the method of keeping the names on hold whether duly recommended or reiterated is becoming some sort of a device to compel these persons to withdraw their names as has happened.

Judicial Appointment - Supreme Court issues notice to the Secretary (Justice) and the current Additional Secretary (Administration and Appointment) over delays in clearing collegium reiterations.

Judges Appointment - Delays in appointment will discourage competent lawyers in opting for judgeship - With the expanding opportunities to prominent lawyers, it is as it is a challenge to persuade persons of eminence to be invited to the Bench. On top of that if the process takes ages, there is a further discouragement to them to accept the invitation and this is undoubtedly weighing with the members of the Bar in accepting the invitation to adorn the Bench-unless the Bench is adorned by competent lawyers very concept of Rule of Law and Justice suffers.

For Parties : Mr. Pai Amit, AOR (For Petitioner in the C.P.) High Court Mr. Arvind P Datar, sr. Adv. of Orissa Mr. Sibbo Sankar Mishra, AOR Mr. Umakant Misra, Adv. Mr. Niranjan Sahu, Adv. Mr. Rajesh Kumar Nayak, Adv. SCBA Mr. Vikas Singh, Sr. Adv.

ORDER

The critical position of vacancies in the High Courts and the delay in appointment of Judges constrained three Judges Bench of this Court to pass orders on 20.04.2021 seeking to lay down broad timeline within which the appointment process should be completed. With the expanding opportunities to prominent lawyers, it is as it is a challenge to persuade persons of eminence to be invited to the Bench. On top of that if the process takes ages, there is a further discouragement to them to accept the invitation and this is undoubtedly weighing with the members of the Bar in accepting the invitation to adorn the Bench. The Bench had endeavoured to lay down timeline taking into consideration the process for appointment of Judges as also the fact that the time period of sending names six months in advance, prior to the vacancies, was conceived on a principle that the said time period would be enough to process the names with the Government.

It does appear that directions in terms of the order are being observed in breach on many occasions.

If we look at the position of pending cases for consideration, there are 11 cases pending with the Government which were cleared by the Collegium and yet are awaiting appointments. The oldest of them is of vintage 04.09.2021 as the date of dispatch and the last two on 13.09.2022. This implies that the Government neither appoints the persons and nor communicates its reservation, if any, on the names.

There are also 10 names pending with the Government which have been reiterated by the Supreme Court Collegium starting from 04.09.2021 to 18.07.2022.

We may notice that among the names, the reconsideration has been sought by the Government on cases where despite second reiteration the person was not appointed and consequently the person concerned withdrew the consent and the system lost the opportunity of having an eminent designated senior Advocate on the Bench. Similarly, in another case where the Government has sought reconsideration, reiteration has occurred three times. In our order we had clarified that once the Government has expressed its reservation and that has been dealt with by the Collegium, post second reiteration, only the appointment has to take place. Thus keeping the names pending is something not acceptable.

We find the method of keeping the names on hold whether duly recommended or reiterated is becoming some sort of a device to compel these persons to withdraw their names as has happened.

Learned counsel for the petitioner points out that in fact one of the candidates, pending for appointment on 04.09.2021 after being reiterated, Mr. Jaytosh Majumdar has even passed away recently.

Needless to say that unless the Bench is adorned by competent lawyers very concept of Rule of Law and Justice suffers. In the elaborate procedure from taking inputs from the Government post recommendation from the collegium of the High Court, the Supreme Court Collegium bestowing consideration on the names, there are enough cheques and balances.

Mr. Vikas Singh, President of the Supreme Court Bar Association who had assisted in the original matters among other lawyers seeks to point out that even the recommendation made for appointment for the Supreme Court more than five weeks ago is still awaiting appointment.

We are really unable to understand or appreciate such delays. Thus at the inception we consider appropriate to issue a simple notice to the current Secretary (Justice) and the current Additional Secretary (Administration and Appointment) for the time being returnable, on 28.11.2022 (There has been change in the officers as arrayed in the original contempt petition which was filed on 25.10.2021 which has been listed before the Court for the first time).

A copy of the order to accompany the notice.

A copy be also served on the office of the learned Attorney General.