



# SUPREME COURT BAR ASSOCIATION (Regd.)

SUPREME COURT OF INDIA, TILAK MARG, NEW DELHI-110001 (INDIA)

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Mr. Anil C. Nishani

Mr. Upendra Mishra

August 16, 2023

Hon'ble the Chief Justice of India,  
and the companion Hon'ble Judges,  
Supreme Court of India,  
New Delhi – 110001  
Email : arps.dyc@gmail.com

## **RE: CONCERNS OF THE BAR REGARDING DESIGNATION OF ADVOCATES AS SENIOR ADVOCATES BY HON'BLE SUPREME COURT OF INDIA.**

Your Lordships,

This letter is being written raising certain concerns of the Bar relating to designation of Advocates as Senior Advocates by this Hon'ble Court.

Section 16 of the Advocates Act, 1961 read with Rule 2 of Order IV of the Supreme Court Rules, 2013 empowers this Hon'ble Court to designate an Advocate as Senior Advocate.

Under the scheme of the aforesaid provisions, this Hon'ble Court on 23.4.2015 had designated several Advocates as Senior Advocates.

However, subsequently, a Writ Petition (C) No.454 of 2015 titled as Indira Jaising v. Supreme Court of India, came to be filed before this Hon'ble Court challenging the validity of Section 16 of the Advocates Act. The said Writ Petition remained pending till 2017. Due to the pendency of the said Writ Petition, the exercise of designation remained in abeyance.

By judgment dated 12.10.2017, this Hon'ble Court, in Indira Jaising v. Supreme Court of India, (2017) 9 SCC 766, upheld



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the constitutional validity of Section 16 of the Advocates Act. However, this Hon'ble Court laid down an objective-criteria for consideration to be designated as Senior Advocate.

Pursuant to the aforesaid judgment, and after a hiatus of more than 3 years, the Registry on 6.8.2018 issued a notice inviting application for designation as Senior Advocate. The said exercise concluded on 27.3.2019.

Due to Covid-19 and other reasons, the process of designation was again not initiated for another 4 years. It is only on 25.2.2022, the Registry issued notice inviting applications for designation. Since then, more than one and half years have elapsed, and the process is not yet concluded.

From the aforesaid sequence of events, it is evident that in the last 8 years, the designation process has been done only once. It is for this reason that a large number of 355 Advocates have applied for designation in the current round. It is respectfully prayed that the large number of applications should not dissuade this Hon'ble Court from designating meritorious and deserving candidates.

In the last designation concluded on 27.3.2019, a total of 37 candidates out of total 105 candidates were designated. Out of the deferred candidates list, another set of 20 applicants were also designated subsequently on 8.12.2021. Thus, out of total 105 applicants in the previous round, a total of 57 applicants were designated. One of the primary reasons for designation of large number of candidates was because the designation was taking place after a gap of 4 years and a large number of candidates had applied.

Similarly, the current process of designation is also taking place after a long gap of almost 4 years and only second in



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last 8 years. It is, therefore, respectfully prayed that this Hon'ble Court should be liberal in designating meritorious and deserving candidates. In the career of litigating lawyers, who come from across the length and breadth of the country to practice before the Apex Court, and who have struggled hard in the national capital with high cost of living, the designation as Senior Advocate is the ultimate pinnacle. Accordingly, due regard to their aspirations deserves to be observed. Once designated, it is obvious that market forces take over.

Another area of concern is the requirement of being exceptional where the candidate is under 45 years of age. It may be noted that both this Hon'ble Court as well as High Courts have in the past designated several lawyers who were as young as in their 30s. They have gone on to become renowned lawyers contributing to jurisprudential growth. Several judges, who have been elevated in early 40s, have gone on to become exceptional judges and even occupied highest judicial office. Age, as a factor alone, should not deter this Hon'ble Court from designating lawyers under 45 years of age. Merit should be the criteria. It is also worth while mentioning that neither the Advocates Act nor the Supreme Court Rules prescribe minimum age as eligibility for designation.

Recently, this Hon'ble Court by its order dated 13.7.2023 dismissed Review Petition (C) Diary No.19061 of 2023 titled as Secretary, Ministry of Consumer Affairs v. Dr. Mahindra Bhaskar Limaye & Ors. In the said Review Petition, the Central Government had sought review of the judgment of this Hon'ble Court which had held that 10 years standing as a lawyer is sufficient to be appointed as President and Member of State and District Consumer Commissions. If a lawyer with 10 years standing is fit to become President of State



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Consumer Commission, which performs judicial function, then he should be equally eligible to be considered for designation as Senior Advocate. The role of a Senior Advocate cannot be placed at a higher pedestal than a role which entails performance of judicial function.

Further, when the process for designation was initiated on 25.2.2022, the requirement as per Indira Jaising's judgment (supra) for a candidate to apply was only to have 10 years of practice. Even in the last round of designation, a large number of under 45 years of age candidates had applied and deserving candidates were designated.

Accordingly, even in the present round, a large number of meritorious and deserving candidates under 45 years of age have applied. However, mid-way, the Indira Jaising's judgment (supra) was modified by judgment dated 12.5.2023 and an added criteria of being exceptional for candidates under 45 years of age was added.

It is the respectful submission that since this requirement was added on 12.5.2023 i.e., after the process had already begun on 25.2.2022, this Hon'ble Court should be liberal in applying this criterion and meritorious and deserving candidates under 45 years of age should be considered for designation at par with other candidates. It is settled principle of law that eligibility criteria should not be changed after the process has already commenced leading to disqualification of candidates, who were otherwise qualified when the process had begun.

It may also be noted that this Hon'ble Court is the final court of appeal. The litigants have no further remedy against the orders passed by this Hon'ble Court. Hence, the litigants always prioritize engaging designated Senior Advocates before this Hon'ble Court. The litigants belong to all strata of



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life. Hence, this Hon'ble Court should strive to ensure that sufficient number of meritorious and deserving Senior Advocates are available, who can give voice and representation to the not so affluent class of litigants. If the number of designations is restricted significantly, as is being apprehended, it would lead to making existing Senior Advocates more unaffordable and denial of accessibility to an average litigant.

In view of the aforesaid, it is respectfully prayed that since the designation has taken place only once in the last 8 years leading to filing of large number of applications, this Hon'ble Court should be liberal in designating meritorious and deserving candidates.

With respectful regards,

Yours sincerely,

(Dr. Adish C Aggarwala)

Senior Advocate

President

Supreme Court Bar Association

CC :

Learned Mr. R. Venkataramani, Attorney General for India,  
New Delhi, for information and necessary action