



सत्यमेव जयते

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Dear Ravi Shanker Prasad ji,

I am writing to you with a heavy heart, given the recent state of affairs. As a Member of Rajya Sabha from the state of Madhya Pradesh, and as a senior member of the bar, I must articulate the unease amongst the members of the bar and public at large on the issue of appointment of judges/Chief Justices.

Two years ago, I initiated a debate in the Parliament on the disharmony of co-existence between the Collegium and the government. I firmly believe on pure constitutional principles that either we respect and faithfully implement the NJAC judgment [(2016) 4 SCC 1] of the Supreme Court or lawfully seek a review of the judgment and/or initiate once again the process of reforming the system. Reform is necessary since the Collegium system at times looks very incestuous. But till reform takes place the judicial verdict must prevail.

A glaring case of the government's contumacy is in ignoring or not responding to the Collegium recommendation dated 10th May, 2019 in respect of Justice A.A. Kureshi of Bombay High Court to be appointed as Chief Justice of Madhya Pradesh High Court. The Collegium gave its recommendation in the following words, "*Having regard to all relevant factors, the collegium is of the considered view that Mr Justice A.A. Kureshi is suitable in all respects for being appointed as chief justice of the Madhya Pradesh High Court. The collegium resolves to recommend accordingly.*"

No valid explanation has been forthcoming from the Ministry for withholding the recommendation of Justice A.A. Kureshi. This compounds the issue of primacy of Collegium which is the law declared by the Supreme Court in the NJAC judgment.

The Gujarat Bar, which had occasion to judge the judge, as per newspaper reports has registered its protest over government inaction to issue the appointment order, saying that it apparently smacks of political mala fides.

The past track record of the NDA government in this respect is not very encouraging. Of the 94 names recommended by the CJI J.S. Khehar led Collegium, the government held back/returned 36 names for reconsideration. Similarly, during CJI Dipak Misra's tenure, the Centre held back/returned 55 of 97 recommended names for reconsideration.

The Ministry of Law & Justice may legitimately feel that it is not a post office. Off late it has been acting more in the vein of an errant postman. We are governed by a Constitution of which the last word on interpretation lies with the Supreme Court. The Parliament in its wisdom can always initiate reform till it does not violate the basic structure of our Constitution propounded in Kesavananda Bharati's case [AIR 1973 SC 1461].

Independence of the judiciary is one of the hallmarks of our Constitution. Dependence on judiciary for recommendations is the last word spoken on this issue by our constitutional court. Till this is not suitably reformed by way of a constitutional amendment, the role of the Law Ministry or the government gets limited by the verdict delivered in the NJAC judgment.

But in this case, the withholding of the recommendation of the Collegium for nearly two long months erodes the confidence of the people in the working of the Collegium system. More so, when it is done in a case of a judge whose track record is vouched for by the legal fraternity.

This also leads one to the inescapable conclusion that the Centre/Law Ministry has lost faith in the Collegium and its decision making ability. Such a message is a disastrous one and it will only lead to erosion of reputation of the Judiciary in the minds of the public at large. It is also indicative of the fact that the Ministry is choosing to take a public stand and go against the Constitutional Scheme for judicial appointments.

The present state of affairs should not be allowed to continue. Cogent steps must be taken to preserve the Constitutional Scheme as well as instil confidence in the judiciary. When

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the Collegium and the Ministry are at loggerheads, the only sufferer is the justice delivery system.

My earnest appeal to the government is to either respect the decision of the Collegium and to complete the process of appointment or if it has valid reasons, to present those reasons to the Collegium for its consideration. At any rate, these and such impasses need to be debated both in Parliament as also amongst the stakeholders, since judicial independence is an inherent facet of our Republic, which needs to be preserved at any cost.

Yours sincerely,

(Vivek K. Tankha)

To,
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