

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO. _____ OF 2019
(A WRIT PETITION UNDER ARTICLE 32 OF CONSTITUTION OF INDIA)

IN THE MATTER OF:

Youth Bar Association of India

POSITION OF PARTIES

.....Petitioner

VERSUS

- | | |
|---|--------------------------------|
| 1. Union of India
Through Secretary
Ministry of Law & Justice
Jaisalmer House
New Delhi. | Contesting
Respondent no. 1 |
| 2. Supreme Court Collegium
Through Secretary General
Supreme Court of India.
Tilak Marg,
New Delhi. | Contesting
Respondent no. 2 |

**A WRIT PETITION UNDER ARTICLE 32 OF THE
CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN
NATURE OF MANDAMUS, APPROPRIATE ORDER OR
DIRECTION, DIRECTING THE RESPONDENTS TO
APPOINT JUDGES AS AGAINST THE SANCTIONED
STRENGTH IN HIGH COURTS AS EXPEDITIOUSLY AS
POSSIBLE AND OTHER DIRECTIONS.**

To

The Hon'ble Chief Justice of India
And his companion Judges of the
Supreme Court of India at New Delhi

The humble Petition of the
Petitioner above-named.

MOST RESPECTFULLY SHOWETH:

1. That the petitioner is filing the present Writ Petition for issuance of Writ in nature of Mandamus, an order or direction directing the respondents for issuance of writ in nature of mandamus, orders or direction, directing the respondents to appoint the judges as per the sanctioned strength in the Hon'ble High Courts as expeditiously as possible to meet up the needs of the litigants suffering from the delay in access to justice and issue appropriate orders and decide the representation submitted by the Petitioner seeking increase in the sanctioned strength of the Judges.
- 1A. That the instant writ petition in nature of Public Interest is being preferred under Article 32 against the State and its functionaries for violating the fundamental rights of citizens of India enshrined under Article 14, 19 and 21 of the Constitution. Due to non-appointment of judges in High Courts as per sanctioned strength citizen's right to speedy justice is being violated.
- 1B. That the petitioner is an association registered under Society Registration Act, 1860 bearing registration no. _____ titled as 'YOUTH BAR ASSOCIATION OF INDIA' having Registration Address as

Registration certificate of the petitioner association has been annexed along with the petition. The present petition has been filed through its national president Sanpreet Singh Ajmani,

Uttarakhand and an authority letter has been granted to him on behalf of the society. Sanpreet Singh Ajmani is holding PAN card bearing no. _____ having annual income of _____ in assessment year _____ and his _____, copy of which has been annexed to the petition.

- 1C. That there is no civil criminal or revenue litigation involving the petitioner which has any legal nexus with the subject matter of the present Writ petition.
- 1D. That the present Writ petition is being filed praying for certain directions which will be very helpful to the citizens of India who are seeking justice. If such directions are not passed, the inadequacy of judges in High Courts will result in violation of basic fundamental right of speedy justice.
2. That a representation dated 28.06.2019 (annexure P-3) was sent to the various authorities, who have authority to initiate process of appointing of judges in High Court and to

increase the sanctioned strength of the Judges. According to knowledge of petitioner, no further progress has been made in this regard by the competent authorities and hence present writ petition is being filed under Article 32 of Constitution of India for issuance of appropriate Writ order or direction.

3. That this is the second Writ-Petition filed by the petitioner in this Hon'ble Court on same or similar issue. Earlier petition filed by the petitioner on similar issue was Writ Petition (Civil) No.342/2018 which was disposed of by this Hon'ble Court with liberty to refile as and when advised (Annexure P-1).
4. That the cause of action for filing this writ petition accrued to the petitioner firstly on 13.07.2018, when this Hon'ble Court, disposed of the Writ Petition (Civil) No.342/2018 by granting liberty to the petitioner to re-file the petition, if it is so advised, in future and everyday subsequently thereafter due to infringement of right to speedy trial.
5. That the Petitioners have no personal gain or interest, or private motive in filling the instant petition. There is no civil, criminal, revenue or any litigation involving the petitioner which has or could have a legal nexus with the issues involved in this PIL.
6. That all of the documents annexed with the present writ petition are in public domain.

7. BRIEF FACTS OF THE CASE:

- i. That the Petitioner earlier also filed a Writ Petition (Civil) No. 342/2018 seeking indulgence of this Hon'ble Court mainly on the issue of scantiness of the Judges in the Hon'ble High Courts.

True Typed Copy of the Writ Petition (Civil) No. 342 of 2018 dated 11.04.2018 filed before this Hon'ble Court has been annexed herewith as ANNEXURE NO. P-1 at pages _____

- ii. That this Hon'ble Court, however, vide order dated 13.07.2018 disposed of the said Writ Petition granting liberty to the petitioner to re-file the petition, if it is so advised, in future.

True Copy of the Order dated 13.07.2018 passed by this Hon'ble Court in W.P. (C) No. 342 of 2018 has been annexed herewith as ANNEXURE NO. P-2 at pages _____

- iii. That though some appointments have been made in the various High Courts as well as in this Hon'ble Court but still about 39% of the sanctioned strength of the Judges of the High Courts are lying vacant as on 01.06.2019.

True Typed Copy of the Chart showing approved strength and respective vacancies on 01.06.2019 has been annexed herewith as ANNEXURE NO. P-3

at pages _____

- iv. That the Petitioner have already made representation on 28.06.2019 seeking appointment of Judges as per the sanctioned strength and have also prayed to increase the sanctioned strength of the Judges.

True Typed Copy of the Representation dated 28.06.2019 has been annexed herewith as ANNEXURE NO. P-4 at pages _____

- v. That in the aforesaid backdrop, taking into account the rapid increase in pendency of the cases in the courts and also taking note of the fact that the appointment of the Judges in the High Courts is not being done in conformity to the sanctioned strength, the need of the hour demands that the respondents may very kindly be directed to take dire steps to fill up the vacancies of the Judges of the High Courts as well as the Subordinate Courts as per the sanctioned strength and also consider to increase the sanctioned strength of the Judges, which ought to have been raised taking into account the rapid increase in the pendency of the cases and the population of the country, which has also grown many folds.

True Typed Copy of the List of Cases pending in Supreme Court of India for adjudication on 01.06.2019 has been annexed herewith as

ANNEXURE NO. P-5 at pages _____

- vi. Hence, present Writ Petition.
8. That it is of utmost necessity that present situation may be addressed and meaningful directions may be issued for interest of justice in large public interest.

GROUND

- I. Because 'judiciary' is the part of basic structure of the Constitution and also considered to be a pillar of democracy. Interference, by any means, affecting its smooth functioning amounts to interference in the independence of judiciary. Causing delay in appointing the judges might not be the expressive way of interfering with the independence of judiciary but it might be an indirect way of hampering its independence. For rule of law to prevail, judicial independence is of prime necessity.
- II. Because judiciary is a limb of the democracy. It should not be left bare handed to cause its own work done. Not providing adequate human resource to cause its function perform is nothing less than impeding dispensation of justice. Justice, socio-economic or political are the constitutional goals aspired by the founding fathers. Preamble of the Constitution containing the collective aspirations of the framers of the Constitution forms part of a basic structure. It

provides that 'justice' as the basic features for democracy to survive. Any obstruction in the dispensation of justice shall amount deviation from the aspirations of Constitution makers. Wait for long to get justice in the want of sufficient strength of judges is impliedly an impediment in the dispensation of justice.

- III. Because while filling up the vacancies in the Council of the States and the House of the People a statutory time limit has been prescribes under Section-151A of THE REPRESENTATION OF THE PEOPLE ACT, 1951 as well as under ARTICLE 62(1) AND (2) OF THE CONSTITUTION OF INDIA, which deals with the specific time of the appointment to be done in case of the President of India and that is being strictly observed while making appoint but while in appointment of judges although having prior information regarding the retirement of the Hon'ble Judges no effective steps are taken to fill up those vacancies.
- IV. Because speedy trial is a part of reasonable, fair and just procedure guaranteed under Article 21. This constitutional right cannot be denied even on the plea of non-availability of adequate judges or financial resources. The state may have its financial constraints and expenditure but the law does not permit any government to deprive its citizens of the constitutional

rights on plea of poverty.

- V. Because the Right to Speedy Trial is considered as a Fundamental right of the citizen of this country which has been explicitly dealt by this Hon'ble Court in *Hussainara Khatoon Vs State of Bihar* AIR 1979 SC 1377 in the year 1979 and this right is implicit in ARTICLE 14 AND 21 OF THE CONSTITUTION OF INDIA. It is the constitutional obligation of the government to devise such procedures as would ensure and implement speedy trial. This Hon'ble court being majestic authority has to add as guardian of Fundamental rights of the citizens.
- VI. Because Timely delivery of justice is a part of human rights. Denial of speedy justice is a threat to public confidence in the administration of justice.
- VII. Because 'Justice delayed is justice denied'. If the process of administration of justice is so time consuming, laborious, indolent and frustrating for those who seek justice that it dissuades or deters them from even considering resort to that process as an option, it would tantamount to denial of not only access to justice but justice itself.
- VIII. Because the leniency shown by the Government by the way of withholding the recommended names from this Hon'ble court for the appointment of judges in High Courts for a long period of time without any justification

increases the vacancy at its peak. It is important to maintain the ratio of judges to the population for the fast as well as timely disposal of cases.

- IX. Because in Supreme Court Advocates-On-Record Association vs. Union of India (1993) 4 SCC 441 in its para 486(2) it is stated that “initiation of the proposal for appointment in the case of the Supreme Court must be by the Chief Justice Of India and in the case of High Court by the Chief Justice of that High Court.....”. Thus, duty is cast upon the Chief Justice of the concerned High Courts to fill up the vacancies but despite of huge number of vacancies, the Hon’ble High Court is not proposing enough names to fill up the vacancies.
- X. Because the constitutional task assigned to the judiciary is in no way less than that of other functionaries i.e. legislature and executive.
- XI. Because primacy to be accorded to Hon’ble Chief Justice of India’s views amongst the consultees mentioned in Articles 124(2), 217(1) and (c) primacy in the sense that the opinion of the Chief Justice of India would be binding on the President, i.e., the executive. Therefore, the government cannot sit idle over the recommended names by this Hon’ble Court.
- XII. Because as per the Article 50 of the Constitution of India for the very specific purpose of independence of

judiciary, a direction is given to take steps to separate the judiciary from the executive in the public services of the State.

XIII. Because the citizens of this country being frustrated due to the long pendency of the cases and dates after dates started losing faith on judiciary and it may lead to the worst situation in the upcoming time that the society will start taking law in their own hands and the ultimate sufferer in whatever situation may be are the common and poor people of this country.

XIV. Because the main intention of the framers of the constitution in regard to judiciary was to carry out the constitutional message, and it is its responsibility to keep a vigilant watch over the functioning of democracy in accordance with the dictates, directives and imperative commands of the constitution by checking excessive authority of other constitutional functionaries beyond the ken of the constitution. In that sense the judiciary has to act as a sentinel on the *qui vive*. But the intention of the framers of the constitution is not adhered to at its inception by not appointing judges as per the sanctioned strength.

XV. Because the young lawyers who have opted law and litigation as means to live with the dignity are on the verge of extinction due to prolong delay in disposal of the

cases. The inordinate delay caused in conclusion of the cases hampering, on one hand, entire justice administration, on the other hand, affecting adversely the young lawyers striving for a securing career.

XVI. Because the reputation of the institution is at the stake.

Unexplained delay in filling up the vacancies and delayed disposal of cases consequent thereto impeding the trust and the faith of not only the sufferer but also the common people in this institution.

XVII. Because 'judiciary' is the part of basic structure of the Constitution and also considered to be a pillar of democracy. Interference, by any means, affecting its smooth functioning amounts to interference in the independence of judiciary. Causing delay in appointing the judges might not be the expressive way of interfering with the independence of judiciary but it might be an indirect way of hampering its independence. For rule of law to prevail, judicial independence is of prime necessity.

XVIII. Because while filling up the vacancies in the council of the states and the house of the people a statutory time limit has been prescribed in Section-151A of THE REPRESENTATION OF THE PEOPLE ACT, 1951. The above said section states as follows-

“151A. Time limit for filling vacancies referred to in

sections 147, 149, 150 and 151.—Notwithstanding anything contained in section 147, section 149, section 150 and section 151, a bye-election for filling any vacancy referred to in any of the said sections shall be held within a period of six months from the date of the occurrence of the vacancy: Provided that nothing contained in this section shall apply if-

(a) the remainder of the term of a member in relation to a vacancy is less than one year; or

(b) the Election Commission in consultation with the Central Government certifies that it is difficult to hold the bye-election within the said period.]”

XIX. Because it is further stated that even in the case of filling up the vacancies in the office of the president Article 62(1) of the Constitution Of India has clearly stated that “an election to fill a vacancy caused by the expiration of the term of office of president shall be completed before the expiration of the term” and Article 62(2) of the Constitution Of India states that “an election to fill a vacancy in the office of president occurring by reason of his death, resignation or removal, or otherwise shall be held as soon as possible after, and in no case later than six months from, the date of the occurrence of the vacancy; and the person elected to fill the vacancy shall subject to the provisions of Article 56 be entitled to hold

the office for the full term of 5 years from the date on which he enters upon his office”

- XX. Because it is an admitted fact that judiciary, in this country is the last resort and faith left to a victim as well as to an aggrieved person. The citizen of this country comes before the judiciary with a hope to get justice and justice within time. Even the same was also the intention of the maker of the Constitution of India, but unfortunately the interest of that intention is not taken care of. It is further submitted that in case of vacancy of legislative bodies, by-election is being conducted and the vacancy is filled up but in case of judiciary it is being given as a step motherly treatment.
- XXI. Because for instance it may be mentioned here that the Calcutta High Court has a total strength of 72 but there has been no appointments as per the sanctioned strength, which resulted into huge protest. The question arises here that who is responsible for such a huge vacancy? The answer of this question is very well enumerated in the case of ‘Supreme Court Advocates-on-record Association vs. Union of India’ (1993) 4 SCC 441. In para 486(2) it is stated that *“initiation of the proposal for appointment in the case of the Supreme Court must be by the Chief Justice Of India*

and in the case of High Court by the Chief Justice of that High Court.....”.

- XXII. Because the constitutional task assigned to the judiciary is in no way less than that of other functionaries –legislature and executive. Indeed, it is role of the judiciary in carrying out the constitutional message, and it is its responsibility to keep a vigilant watch over the functioning of democracy in accordance with the dictates, directives and imperative commands of the constitution by checking excessive authority of other constitutional functionaries beyond the ken of the constitution.
- XXIII. Because the delay in appointment of the judges not only destroying the functioning of democracy but also leads towards the lawless society which also violates the main intention of the maker of the constitution.
- XXIV. Because this Hon’ble Court in Supreme Court Advocates-On Record Assn. -Vs- Union of India (1993) 4 SCC 441, it has been very explicitly deal with the primacy to the opinion of Hon’ble Chief Justice of India. It is pertinent to mention herein that in para 478(8) it is clearly stated about the instances of non-appointment which are permissible and justified.
- XXV. Because due to the non-appointment of judges increases the huge backlog of pending matters awaiting disposal at

the High Court. It is pertinent to mention herein that disposal of cases is a “must” and should mean ‘disposal with a decision’ and not merely “striking out” from the list of pending matters. The non- appointment of judges is more than painful for the judiciary which universally professes that “delayed justice almost amounts to denial of justice”.

XXVI. Because the central government is sitting idle over the subject matter neither paying any heed to the representations submitted by the Bar association nor giving any valid reasons in writing for withholding the clearance of names of the judges which are already cleared by the Hon’ble Chief Justice of India.

XXVII. Because the concept of separation of powers is a well-known fundamental political maxim which many modern democracies have adopted. Our Constitution has not strictly adhered to that doctrine but it does provide for distribution of powers to ensure the one organ of the Government does not trench on the constitutional powers of other organs. This is evident from Part V and Part VI of the Constitution. There is and can be no dispute that the distribution of powers concept assumes the existence of a judicial system free from external as well as internal pressures. Under our constitutional scheme, the judiciary has been assigned

the onerous task of safeguarding the fundamental rights of our citizens and of upholding the rule of law. Since the Courts are entrusted the duty to uphold the Constitution and the laws, it very often comes in conflict with the State when it tries to enforce its orders by exacting obedience from recalcitrant or indifferent State agencies. Therefore, the need for an independent and impartial judiciary manned by persons of sterling quality and character and determination and resolute impartiality and independence who would dispense justice without fear or favour, ill-will or affection. Justice without fear or favour, ill-will or affection, is the cardinal creed of our Constitution and a solemn assurance of every judge to the people of third great country. There can be no two opinion at the Bar that an independent and impartial judiciary is the most essential characteristic of a free society. Even though on the question that our judiciary should be independent of the executive and the legislature there is no divergence of views at the Bar, there was some difference of opinion on the actual content of the concept.

XXVIII. Because the Constitution makers strived to ensure that justice promised in the Preamble of the Constitution is pure and is not any manner polluted by executive or political interference is writ large on the face of the

Constitution. Extraordinary powers have been conferred on the Supreme Court and the High Courts under Articles 32 and 226, respectively, manifesting the confidence of the people in the courts' ability to do justice. By Article 50 of the Constitution of India a direction is given to take steps to separate the judiciary from the executive in the public services of the State. The offices of the Attorney General and Advocates General have been given constitutional status with a view to making quality legal advice available to the Union and the States so that they function consistently with the rule of law and safeguard public interest.

XXIX. Because the concept of primacy to be accorded to the views of the Chief Justice of India has three elements, namely, (a) primacy as 'pater familias' of Indian Judiciary, (b) primacy to be accorded to his views amongst the consultees mentioned in Articles 124(2), 217(1) and (c) primacy in the sense that the opinion of the Chief Justice of India would be binding on the President, i.e., the executive. The position of the Chief Justice of India under the Constitution is unique, in that, on the judicial side he is *primus inter pares*, i.e., first among equals, while on the administrative side he enjoys limited primacy in regard to managing of the court business. As regards primacy to be accorded to his views

vis-a-vis the President, i.e. the executive, although his views may be entitled to great weight he does not enjoy a right of veto, in the sense that the President is not bound to act according to his views. However, his views would be of higher value vis-a-vis the views of his colleagues, more so if he has expressed them after assessing the views of his colleagues but his view will not eclipse the views of his colleagues forbidding the President, i.e. the executive, from relying of them. The weight to be attached to his views would be much greater as compared to the weight to be accorded to the views of the other consultees under Article 217(1) since he has had the advantage of filtering their views and ordinarily his views should prevail except for strong and cogent reasons to the contrary but that does not mean that the views of the other consultees would be rendered irrelevant or non-est forbidding the President, i.e. executive, from noticing or relying on them. The views of the Chief Justice of India would be entitled to even greater weight when he is the sole consultee under the constitution, e.g. Article 222(1), more so when it concerns a member of the judicial family and ordinarily his view should be accepted and acted upon by the President, i.e. the executive, unless there are compelling reasons to act otherwise to be recorded in writing so that

the apprehension of the executive having acted in a manner tantamounting to interference with judicial independence is dispelled.

XXX. Because the Framers of the Constitution placed a limitation on the power of Executive in the matter of appointment of Judges to the Supreme Court and the High Courts. The requirement of prior "consultation" with the superior Judiciary is a logical consequence of having an "independent Judiciary" as basic feature of the Constitution. If the Executive is left to ignore the advice tendered by the Chief Justice of India in the process of consultation, the very purpose and object of providing consultation with the Judiciary is defeated. Therefore, there should not be any doubt regarding the basic intention of the constitution makers that the Executive is bound by the advice/recommendation of the Chief Justice of India in the process of consultation under Articles 124(2) and 217(1) of the Constitution.

PRAYER

In the facts and circumstances mentioned above the petitioner most respectfully prays that this hon'ble Court may please to:

- a. issue writ in the nature of mandamus, orders or directions to the respondents to immediately appoint judges as per sanctioned strength in

Hon'ble High Courts and Subordinate Courts functioning in the country in interest of justice;

- b. issue writ in the nature of mandamus, orders or directions to the respondents to consider the representation dated 28.06.2019 and pass a well-reasoned and speaking order within some time frame, which this Hon'ble Court may deem fit and proper, in the peculiar facts and circumstances of the present case;
- c. Pass such other and further order as this Hon'ble Court may deem just in the interest of public.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER SHALL EVER PRAY TO THEIR LORDSHIPS.

DRAWN BY:

FILED BY:

**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO. _____ OF 2019**

IN THE MATTER OF:

Youth Bar Association of India ...Petitioner

Versus

Union of India & Ors ...Respondents

AFFIDAVIT

I,

do

hereby solemnly affirm and state as under: -

1. That I am national president of Petitioner association in the abovementioned Petition, am aware of the facts and circumstances of the case, hence entitled to swear this affidavit.

2. That the contents of the accompanying Writ Petition consisting in paragraph 1 to 8 from pages 1 to 24 accompanied with Synopsis and List of Dates at Pages B to H are true and correct to the best of my knowledge, belief and nothing material information has been concealed therefrom.

3. That the Annexures P-1 to P-5 are true copies of their respective originals.

5. That no other Writ Petition has been filed by the Petitioner before this Hon'ble Court or any other court praying for similar relief.

6. That there is no personal gain, private motive or oblique reasons in filing the present public interest litigation.

DEPONENT

VERIFICATION:

I, the above name deponent do hereby verify that the contents of the above affidavit are true and correct to the best of my knowledge, belief and nothing material information has been concealed therefrom. No part it is false.

Verified at New Delhi on this 03rd day of July, 2019

DEPONENT