

IN THE HIGH COURT OF JUDICATURE AT PATNA

(CIVIL WRIT JURISDICTION)

C.W.J.C. NO. _____ OF 2019

In the matter of an
application Under
Article 226 of the
Constitution of
India

And

In the matter of;

Dinesh @ Dinesh Singh @ Dinesh Kumar, aged
about 46 years, male, Gender Male, S/o
Sri Akhileshwar Prasad Singh, Permanent
resident of Kurthaul Rajputana, P.S- Parsa
Bazar, District- Patna.

..... **Petitioner.**

Versus

1. The Union of India through the Secretary, Ministry of Law, Justice and Company Affairs, Govt. of India, New Delhi.
2. The Secretary, Ministry of Law, Justice and Company Affairs, Govt. of India, New Delhi.
3. The High Court of Judicature at Patna through the Registrar General.
4. The Registrar General, Patna High Court, Patna.
5. The Registrar (Appointment), Patna High Court, Patna. **Respondents.**

To,

The Hon'ble Mr. Justice A.P.Sahi,
the Chief Justice of the High

Court of Judicature at Patna and his Companion justices of the said Hon'ble Court.

The humble petition on behalf of the petitioner named above.

MOST RESPECTFULLY SHEWETH:-

1. That the instant writ petition is being preferred in public interest for the grant of following reliefs:

- i. For the issuance of a writ of mandamus, and /or, any other appropriate writ/ direction/order commanding the respondent no.1 and 2 not to give effect to the recommendation made by the

collegium of Patna High Court for appointment of 15 advocates as judges of Patna High Court.

- ii. For the issuance of a writ in the nature of mandamus, and /or, any other writ/ direction/order commanding the respondents no.3,4 and 5 to produce before the court the records of the entire proceeding of the collegium that began with the collection of Bio-data and culminated in the final list containing the names of 15 recommendees from the Patna High Court, Bar for their appointment on the Bench of Patna High Court.

iii. For the issuance of a writ in the nature of mandamus, and or any other writ/ direction/order commanding the respondents to invite applications from all eligible advocates of Patna High Court Bar and conduct a fair and transparent test of merit of all the applicants before recommending the best and most suitable candidates for appointment as judges of the High Court at Patna, in consonance with the mandate of Articles 14 and 16 of the constitution of India.

2. That the instant petition is being preferred, among others to be urged at the bar, on the following

Grounds :

- i. For that the proceedings of the Patna High Court collegium, beginning with the collection of Bio data in April 2019 and culminating in the recommendation of 15 names from the High Court Bar, have been apparently conducted in an arbitrary manner and without complying with the requirements of constitutional provisions contained in Article 14 and 16.

ii. For that the entire exercise was not only an attempt to promote vested interests by trying to disregard the MOP norms but it also ended up disrespecting the pious opinion/ views and valuable guidance of the founding fathers of our constitution during the constituent Assembly debates.

iii. For that the courts (especially constitutional courts) are public institutions, funded by the tax-paying public of the country and therefore, any exercise by the High Court, aimed at selecting and recommending names from the Bar for appointment as judges, has to be in full adherence to

the constitutional mandate contained in Articles 14,15,and 16 of the Constitution of India.

iv. For that the judicial Branch of any democratic country survives on and derives sustenance and legitimacy from public faith and public respect and when holders of High offices in the judiciary resort to opacity, arbitrariness casteism, cronyism and nepotism in picking up their successors on the Bench, the very credibility of the institution becomes seriously doubtful.

v. For that the manner in which the collegium has picked up names

has eroded the very credibility of the institution. the Bar and the legal fraternity feels a sense of betrayal by the judges.

vi. For that the list of recommendees is full of men/ women with questionable credentials and dubious records and by all accounts the collegium has ignored/ disregarded those dubious distinctions of the recommendees, resulting in loss of public faith in the institution.

vii. For that the list of recommendees stinks of both cronyism and casteism(negative and positive)

by the members of the collegium as the three Judges ended up picking 9 out of 15 names from their own castes/ communities giving a virtual 60% reservation to the two castes which had representation in the collegium.

viii. For that the collegium has also acted contrary to the constitutional mandate and the memorandum of procedure (MOP) by totally excluding the OBCs/ SCs and STs from the list of recommendees.

ix. For that apparent conflict of interest in the recommendation of the collegium, coupled with the

widely held belief in the legal fraternity of Patna that undue influence of outsiders on the recommendations is distinct and clear, calls for intervention by this Hon'ble Court.

3. That the petitioner asserts and states that he has preferred the instant petition in public and national interest. The petitioner further states that he has no personal interest, direct or indirect, in the matter. The petitioner is a public spirited citizen. He declares that he has never held, nor shall he ever hold in future, any post, position or office, that would involve receiving any salary, Honorarium, stipend fees or

emoluments of any kind from the state as defined in Article 12 of the constitution of India. The petitioner further states that he is a citizen of India and being a permanent resident of the State of Bihar, he has the necessary competence to invoke the writ jurisdiction of this Hon'ble Court.

4. That the factual background in which the present writ petition(in the nature of a PIL) has been initiated is as follows:

In the last week of July 2019, the newspapers in the city of Patna reported that the Patna High Court collegium had recommended a total

of 15 names from the High Court Bar for their appointment as judges of Patna High Court. The names were those of Shilpa Singh, Manish Kumar, Sandip Kumar, Amit Pawan, Raj Kumar, Amit Shrivastava, Kumar Manish, Piyush Lal, Jitendra Kishore Verma, Archana P.Khopde, Sanjay Kumar Giri, Anshuman, Rashid Izhar, Khatim Raza and Mrigank Mauli, Before that, throughout the months of April, May and June, in the corridors of Patna High Court, the members of the Bar were constantly conversing about a unique exercise called 'Bio-data collection' by the High Court from

dozens and dozens of advocates who were aspirants for the vacancies on the bench.

5. That in continuation of the averments made in the preceding paragraph, the petitioner further states that there were a few clearly discernible patterns in the list of recommendees. Firstly, 9 out of 15 names were of lawyers belonging to the caste/ community of the three judges (including the CJ) who were part of the collegium. 3 were from the Bhumihar community 6 from the Kayasth community. The chief Justice belongs to the Bhumihar community and the two other judges in the collegium justices Kumar and Sharan are Kayasth gentlemen. Thus, 60% of the total 15

names were from the two judicially powerful caste groups. On the date on which the recommendation was made, the actual Bench strength of Patna High Court was 30. Out of this, 15 judges (or 50%) of the Bench strength, were from the Bhumihar and Kayasth communities. There were only 3 OBC judges out of 30 and no Dalit Judge at all on the Bench.

6. That in continuation of the averments made in the preceding paragraphs, it is further stated here that of the total 15 names, not one was from the Dalit, EBC, OBC or tribal section of the Society. The collegium was blinded by consideration of Caste to such an extent that it completely disregarded

the MOP and the constitutional provisions that mandate equality of opportunity and social justice. The list obviously caused massive outrage in the High Court Bar and lawyers began to protest against the same. The fact that unfamiliar names like those of Amit Pawan (A supreme court advocate who employs the daughter of a collegium member) Archana Khopde (an advocate believed to be backed by a powerful Supreme Court Judge) and Shilpa Singh who spent 17 years in Delhi practicing law and having failed to impress the judges of Delhi High Court came to Patna High Court where her fellow castemen were wielding, judicial power were therein the list,

added to the anger of the legal fraternity in Patna.

7. That before proceeding further with the narrative, the petitioner deems it necessary to quote a few very important words spoken on the subject (arbitrariness, prejudice and extraneous considerations in judicial appointments) by Dr. B.K. Ambedkar in the constituent Assembly on the 24th of May 1949. "I personally feel no doubt that the chief justice is a very eminent person. But after all, the chief justice is a man with all the feelings, all the sentiments and all the prejudices, which we the common people have." (CAD, Book no.3, Vol No.8 page-258). The most adorable of our

founding fathers, Dr. Ambedkar was sounding a note of caution and telling the constituent Assembly that it was dangerous to have blind faith in the integrity and impartiality of the chief justice. The decision of the Patna High Court, unfortunately, proves the most revered of our founding fathers absolutely right.

8. That on the same subject of an independent judiciary, speaking in the constituent Assembly on the 23rd of November 1949, Shri Alladi Krishnaswami Ayyar had this to say:

“ The doctrine of independence (of judiciary) is not to be raised to the level of a dogma so as to enable the

judiciary to function as a kind of super-legislature or Super-executive."

(CAD, Book No.5, Vo-II, page-837).

9. That speaking in the constituent Assembly in the 24th of November 1948, Shri T.T. Krishnamachari had warned against over empowerment of judiciary in the following words:

"This trend of empowering the judiciary beyond all reason and making it a regular administration by itself, will perhaps lead to a greater danger than we can now contemplate."

(CAT) Book no.2 vol no.VII, page 584).

10. That another distinguished member of the constituent Assembly, Prof. K.T.Shah, Speaking therein had cited

an apt example of a British lord who had resorted to nepotism in making appointments and then tried to defend himself by (mis) reading the relevant legal provision. (CAD Book no.2, Vol No. VII, page 1053).

11. That yet another of our founding fathers, Shri Naziruddin Ahmad, speaking in the constituent Assembly on the 31st of December, 1948 had stressed the need to keep those lawyers out of reckoning for judicial appointments who had previous convictions, moral turpitude or issue of personal illiteracy. (CAD Book No.2, Vol No. VII page 1180).

12. That before proceeding further with the factual narrative, the petitioner deems it necessary to reproduce the words of Bhagwati J. in a judgment reported in AIR 1985 SC 1420. His lordship defined the word merit in the following words. " merit consists of a high degree of intelligence, keen and incisive mind, sound knowledge of the basic subjects, infinite capacity for hard work, and it also calls for a sense of commitment and dedication to the cause of the poor."

13. That before demonstrating the lack of merit in the candidates recommended by the collegium and the deplorable manner in which the sound advice of our

founding fathers has been consigned to the dustbin by the Chief Justice and his two brother judges, the petitioner deems it proper to devote a paragraph or two to the specific norms in the memorandum of procedure (MOP) which contains the definitive procedure for appointment of High Court judges.

A copy of the memorandum of procedure (MOP) governing judicial appointment is annexed herewith and marked as Annexure- 1 to this writ petition.

14. That a perusal of Para 12 and 13 of the MOP would show that it mandates the entire proceeding to be in writing.

It further specifies that the chief justice has to consult his two senior most colleagues on the Bench regarding the suitability of the names proposed. The fact that suitability in the contest of this case means merit, ethics, discipline, comprehension, integrity and adherence to constitutional values is made clear when we look at Annexures to the MOP in which the individual details of the recommendees are to be filled.

15. That in continuation of the averments made in the preceding paragraph it is further stated here that the requirements of individual merits expected of the recommendees is so comprehensive, that the Chief

Justice and his colleagues just cannot act in deviation from, and disregard of, them as contained in the Annexures to the MOP. In fact, the combined reading of the Annexures to the MOP and the pious opinions of our founding fathers, expressed in the Constituent Assembly are complimentary in nature. Read together, they prescribe a comprehensive code (of merit morals and discipline) and every name to be recommended by the high Court collegium has to adhere strictly to this combined and comprehensive code.

16. That in the paragraph to follow the petitioner would be briefly mentioning the reasons (alongwith individual names) why the list of

recommendees would miserably fail on the touchstone of this comprehensive code prescribed in the MOP and deriving utmost legitimacy and sanctity from the much revered vies of our founding fathers on the subject.

17. That the special merits of the 'Special' names recommended by the collegium of the respondent High Court are given hereunder.

a) Archana Palkar Khopde is a name that the Bar of Patna High Court is largely unfamiliar with. Hardly any advocate or judge of this court would testify that Ms. Khopde has ever been seen standing at the Bar and addressing the Bench. This has

never been her speciality. What makes her special in the eyes of the High Court collegium is that she is the daughter of a retired judge of Bombay High Court. More than that, there is a loud and continuous clamor in the corridors of Patna High Court that Hon'ble Justice S.A. Bobde, the CJI-in waiting, is known to Ms. Khopde's family.

- b) Shilpa Singh is a rank outsider who has practised for 17 years in Delhi and has been picked up by the Chief Justice due to her caste factor. She has practiced in Delhi and Patna. Simultaneously since July 2016. It is the talk of the

town that she has used questionable means to make money as a sarkari vakil in Patna High Court despite being in Delhi on most of the working days in 2017, 2018 and 2019.

- c) Amit Pawan is another name that's unfamiliar for every judge and lawyer in Patna High Court. His specialty is that the daughter of justice Rakesh Kumar, a collegium member, was employed in Mr. Pawan's office. What occasion/ opportunity did the judges of Patna High Court have to judge the "Judge " in Amit Pawan?

- d) Kumar Manish is the most 'special' 'recommendee. The majority of the Bar and Bench of Patna High Court has rarely seen him standing at the Bar and addressing the court for five minutes. He has survived on 'panels', prayed for time to file counter affidavit and lacks every ability that Annexures to the MOP expects of a judge to be. The High Court collegium is being utterly dishonest in recommending the name of this 'lower than below average' candidate.
- e) Sandeep Kumar has been favoured by the Chief Justice despite the fact that a previous chief justice (Hon'ble Justice Rekha M.Doshit)

had found him guilty of contempt of court a few years ago.

- f) Manish Kumar, a Bhumihar gentleman' belonging to the same stock as the chief justice, had publically assaulted an advocate (Sri S.K.Verma) in the High Court a few years ago. But his caste and his relationship with the advocate General, who is known to be close to the chief justice, has helped him become a judge-in- waiting.
- g) Raj Kumar is the son of a retired judge of Patna High Court, Aside from this lucky sperm factor, he is also known to be close to the Law Minister of India. How many

judges of Patna High Court would testify to the fact that he has filed and argued cases before them?

- h) Sanjay Kumar Giri is another candidate who has rarely been seen arguing before the courts. His connection with Hon'ble Justice Jyoti Saran has won the day for him. If Mr.Giri is a good enough candidate then there are at least 500 names in the High Court Bar who are better, much better and far better than him.
- i) Rashid Izhar has been an accused in a criminal case.
- j) Amit Shrivastava is a candidate who is above 55 and hence the collegium

was not justified in recommending his name. Besides, his name had earlier been turned down five years ago.

18. That in continuation of the averments made in the preceding paragraphs, it is stated here that most of the names named above are unfit to discharge the duties of High Court Judge as they lack exposure to legal work, they have no experience of legal drafting, they lack the level of intelligence and comprehension required for the job. None of them has any of the ingredients of merit (as defined by Bhagwati J) in him/her. The collegium has arbitrarily picked them up. A test of legal skill, conducted objectively, fairly and

impartially would expose the feet of day of the majority of these recommendees.

19. That in continuation of the averments made in the preceding paragraph it is stated here that the collegium had months of time to test the merits of the candidates. In the interest of the nation, the tax paying public and the institution of judiciary, the collegium must now reveal the mode, manner and methodology adopted/ used by it to test the merits of the recommendees. It would do a world of good to the future judges who would sit in the collegiums of tomorrow to be aware of the methodology used by the collegium of Patna High Court in July 2019. The

petitioner would particularly appeal to the conscience of the Hon'ble Chief Justice and all his brother judges on the Bench of Patna High Court to tell the legal fraternity of Bihar as to what instrument /apparatus was used to conclude that men and women like Sanjay Kumar Giri, Kumar Manish, Khatim Raza, Archana P.Khopde and Sandip Kumar, whose 'selection' has caused unprecedented shock and outrage in the Bar rooms and corridors of Patna High Court.

20. That in continuation of the averments made in the preceding paragraph it is further stated here that if the original text of the Constitution of India could be interpreted to the

advantage of a handful of judges to create an extra-constitutional body called collegium, the same provisions of the constitution, in the chapters of Union judiciary and state judiciary, can also be beneficially construed to introduce a test of competence of the candidates to be recommended. Bringing merit to the centre-stage of the process would change things for the better at all levels of the judiciary.

21. That the petitioner is totally unafraid of the law of contempt (which he firmly believes to be a gun in the hands of selfish and arrogant judges to silence the voice of reason, logic and equality). If the court feels that

anything stated herein amounts to contempt of court, it should feel free to use the weapon of contempt. If personal liberty is the price to be paid for demanding fairness, equality of opportunity and transparency in judicial appointments, the petitioner is ready to serve his time in jail.

22. That the whole issue has raised questions galore. Democracy, by its most widely accepted definition, is the institution of the people, for the people and by the people. The Indian judiciary is no exception to this definition. Therefore, the petitioner craves the indulgence of the High Court to answer the following questions of propriety

and morality separately, categorically and unambiguously:-

a- Did justice Rakesh Kumar participate in the sitting/ meeting of the collegium when Amit Pawan's name was considered ? If yes, did it not amount to conflict of interest in as much as the daughter of justice Kumar is employed in the Delhi office of Amit Pawan?

b- Amit Pawan is a name unfamiliar to every member of the Bar then how on earth did the collegium members discover his so extra -ordinary' qualities and decided to recommend his name? How many judges of Patna High Court would state on oath that

Pawan had appeared before them in their courtrooms?

- c- Was the collegium acting under some kind of strong undue influence in recommending the name of Archana Palkar Khopde? It is the talk of the town that a powerful Supreme court judge who is a CJI-in waiting has influenced the collegium into recommending the name of Ms. Khopde. Is it true? If not, what occasion did the Judges of Patna High Court have had to judge the merit/ talent/ competence of the lawyer in Ms. Khopde ?
- d- Is the collegium not allowing Shilpa Singh to use Patna high

Corut as a career launch -Pad? If she was such a fine lawyer, why did the Delhi High Court (where she practiced from 1999 to 2016) never thought her fit enough to recommend her name? Is she not benefitting from the fact that the chief justice belongs to her caste ?

e- The Collegium members picked up 9 out of 15 names (or 60%) from their own caste groups. In the process, they also insulted the very idea of social justice by giving 0% representation to the Dalits, Adivasis and OBCs. Will the collegium agree to a test of merit where 9 versus 9 (Nine names of collegium caste groups and nine

names of OB/Cs suggested by the Bar) would have their merits tested by an independent body of legal experts , eminent professors and jurists ?

f- will the collegium display the courage to have the list of recommendees voted by each and every judge of Patna High Court ? How many judges of the High Court were consulted by the collegium before recommending names?

g- With the collegium having received/ collected the Bio-data of over 100 lawyers , how were the names shortlisted to exclude some and include some others ?

h- Was the collegium merely going through the motions or was there any genuine attempt to try to test the comprehension and judgment writing abilities of the recommendees ?

i- Does the High Court Collegium have a secret quota for Giri Advocates ? Last year, a Giri was recommended, this year a Giri is recommended again. Did the judges of the High Court overwhelmingly support the idea of having a Giri on the Bench under all circumstances ? Does it not show Giri-obsessed nature of collegium ?

j- If fixers and brokers are (as we know through news reports) affecting the Bench and registry of the Supreme Court of India, how did the high Court insulate itself from such elements during the months-long exercise leading to recommendation of names?

k- Did the collegium deliberately side step the serious nature of indiscipline on the part of Sandip Kumar and Manish Kumar whose conduct has been recorded as despicable and questionable by the High Court and the Bar council respectively ?

1- Did the collegium receive complaints against Shilpa Singh and Amit Pawan, the two outsiders, and did it act upon them?

23. That the entire set facts narrated in the preceding paragraphs would make it clear that the collegium has acted contrary to the pious wishes of the founding fathers and in deviation from the MOP norms. The High courts (and other courts too) are public- owned, public funded institution. The High Court Bench is meant to hear and decide cases including those of constitutional importance. The names to be recommended for judgeship, must therefore, be selected with fairness and impartiality. The Patna High Court has

betrayed the faith of the Bar by indulging in casteism, cronyism and arbitrariness while recommending names. The Bar, comprising lawyers drawn from all sections of the society is rich with men and women of sound legal knowledge, judge-like wisdom, unquestionable integrity and admirable discipline. They come from the lower and deprived sections of the society and also from the upper caste groups. it is nobody's case that merit is the monopoly of only those who belong to the caste of the collegium members. In fact, merit is not the mistress of any community, nor is talent the slave of any particular section of the society,. The denial of social justice in

recommending names and the murder of merit have happened at the same time. Neither is acceptable to the Bar. Equality of opportunity, in the form of a basic test before recommending names, would ensure equal representation for all including the OBCs, EBCc, Dalits and Adivasis. The action of the collegium has been an exercise in intellectual dishonesty and constitutional impropriety. The level of outrage that it has caused in the Bar is unprecedented.

24. That the petitioner has written to the Hon'ble Prime Minister of India and the Hon'ble Chief Justice of India complaining against the arbitrary nature of recommendation. His letters

dated- 31.7.2019 and 9.8.2019 are being brought on record.

Copies of the letters dated-31.7.2019 and 9.8.2019 are annexed herewith and marked as Annexure-2 and 3 respectively to this petition.

25. That the petitioner expects that the respondent no.1 and 2 would respond (and so would the High Court) parawise to the contents of this writ petition specifically answering the questions raised herein above in public interest.

26. That the failure / refusal of the high Court to answer the question raised in

the preceding paragraph, would strength the general belief in the legal fraternity of Bihar that judicial appointments are governed by the norms of Zamindari. In the facts of the case, the reliefs claimed are genuine and they need to be allowed in institutional inters.

27. That the petitioner has not preferred any petition anytime previously in this Hon'ble Corut for the grant of relief claimed herein.

28. That the petitioner has got no other equally efficacious and equitable remedy except to move this Hon'ble Court by way of the instant writ petition.

It is, therefore, prayed that your lordships may graciously be pleased to issue Rule NISI calling upon the respondents to show cause as to why the reliefs prayed for in para 1 of the writ petition be not allowed and on return of the rule/on cause being shown, if any, and after hearing the parties be further pleased to make the rule absolute in the said terms,

And/or

Pass such other order or orders as your lordships may deem fit and proper.

And for this, the petitioner shall ever pray.

AFFIDAVIT

I, Dinesh @ Dinesh Singh @ Dinesh Kumar, aged about 46 years, male, Gender Male, S/o Sri Akhileshwar Prasad Singh, Permanent resident of Kurthaul Rajputana, P.S- Parsa Bazar, District- Patna, do hereby solemnly affirm and state as follows:-

1. That I am petitioner in this case and as such am well acquainted with facts and circumstances of the case.
2. That the contents of this petition have been read over and explained to me in Hindi which I have fully understood and the statements made therein are true to my knowledge which I believe to be true.
3. That the statements made in Para no. _____ are true to my knowledge and those statements made in Para no. _____ are true to my information derived from the records and rest are by way of submission to this Hon'ble court.
4. That Annexures are true/photo copies of their respective original.

IN THE HIGH COURT OF JUDICATURE AT PATNA**(CIVIL WRIT JURISDICTION)****C.W.J.C. NO. _____ OF 2019**Dinesh @ Dinesh Singh @ Dinesh Kumar
... **Petitioner.****Versus**The State of Bihar and ors ... **Respondents.****Sub-****Index**

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IN THE HIGH COURT OF JUDICATURE AT PATNA

(CIVIL WRIT JURISDICTION)

C.W.J.C. NO. _____ OF 2019

Dinesh @ Dinesh Singh @ Dinesh Kumar
... **Petitioner.**

Versus

The State of Bihar and ors **..Respondents.**

Synopsis

Relief Sought:

The instant petition is being filed seeking a direction/ writ order commanding the respondents to produce the entire record of proceeding against of the collegium of Patna High Court leading to recommendation of 15 names by the Patna High Court collegium for appointment as judges of Patna High Court and for other reliefs as the recommendations are in violation of MOP norms and constitutional morality.

Important Dates and Events

30.7.2019-The print media reported that the High Court collegium had recommended 15 names from the Bar for appointment as judges of Patna High court.

31.7.2019(Annex-2) the petitioner made a written complaint to the Hon'ble Prime Minister of India.

9.8.2019(Anneure-3) the petitioner wrote to the Hon'ble CJI against the arbitrary nature of recommendations.

- violates Articles 14,15,and 16 of the constitution of India.
- Contrary to constitutional morality and shows disregard for social justice.

Hence this writ petition.