

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Transfer Petition(s)(Civil) No(s). 2419/2019

M/S PLR PROJECTS PVT. LTD.

Petitioner(s)

VERSUS

MAHANADI COALFIELDS LIMITED & ORS.

Respondent(s)

(FOR ADMISSION and IA No.152015/2019-EX-PARTE STAY)

Date : 06-12-2019 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE K.M. JOSEPH

For Petitioner(s) Mr. Aditya V.Singh,Adv.
Mr. Kaushik Poddar, AOR

For Respondent(s) Mr. K.K.Venugopal,AG

Mr. Ashok Kumar Panda, Sr. Adv.
Mr. T.K.Pradhan, AOR
Mr. Manoranjan P., Adv.
Ms. Aniruddha Purushotham, Adv.
Mr. Abeer Sharma, Adv.
Mr. Yash Pratap, Adv.

Mr. Sibho Sankar Mishra, AOR
Mr. Niranjana Sahu, Adv.
Mr. Uma Kant Mishra, Adv.

Mr. Ashok Parija, Adv. General
Mr. Shibashish Misra, AOR
Mr. S. Debabrata Reddy, Adv.

Dr. Kedar Nath Tripathy, AOR

UPON hearing the counsel the Court made the following
O R D E R

An affidavit has been filed on behalf of the Orissa High Court by the Registrar which shows that despite our last order dated 8th November, 2019 some of the districts

where practically no work has been done through out the year have not resumed work. We had already expressed our sentiments in that order and the continued absentation of lawyers from the court for such a long period of time is an impetus to the litigants to resort to extra judicial proceedings. We thus consider appropriate to request the High Court to identify the adjacent districts where persons can seek redressal of their grievances and in which districts there is normal working and create concurrent jurisdiction in those districts and transfer adequate number of officers from the non-working districts to the working districts for the said purpose.

It has been expressed before us by some counsels present that the problem arises from the demand for creation of a Bench of the High Court in the western and southern part of Orissa on account of large distance to travel to the High Court. Even if that is a grievance, it cannot bring the working of the district courts to a standstill. we fail to appreciate as to how there is a proper atmosphere to create a Bench when even work at district level is not taking place. The creation of a bench of the High Court is a question to be examined by the High Court but in this atmosphere there can be no question of the same or rather should not be examined till such time as the advocates in these districts get back to normal work.

We also call upon the State Bar Council and Bar Council of India to inform us as to what steps have they taken to ensure smooth functioning of all the courts and against delinquent lawyers who despite their advise persist in abstaining from work and affidavit be filed in this behalf within three weeks.

Learned Attorney General has placed before us a brief on appointment of judges on the larger issue on which we entrusted the learned Attorney General with the task of trying to see that the High Court vacancies are expeditiously filled up.

It has been stated in the brief that as per the Memorandum of Procedure (MoP), timelines have been set to facilitate filling up of vacancies of Judges. This requires initiation by the High Court collegium. The process should be initiated atleast six months in advance. Thereafter six weeks time is specified for the Governor/Chief Minister of the concerned State to send the recommendation to the Union Law Minister whereafter naturally the brief has to be prepared forthwith and send to the Supreme Court collegium for which the time specified is four weeks. On the Supreme Court collegium clearing the recommendees, the Union Law Ministry has to put up the recommendations to the Prime Minister within three weeks who would advise the President on the appointment. No time limit has been prescribed for

action by the Prime Minister and the President.

The note emphasise the requirement of a continuous, collaborative and integrated process, where the Government is an important consultee in the appointment process.

The all India figures show that against sanctioned strength of Judges in the High Courts of 1079, the working strength is only 669. There are 410 vacancies. 213 recommendations are stated to be in process with the Government/Supreme Court collegium while recommendations have yet to be received from the High Court collegium for 197 vacancies.

In 2019, only 65 Judges to the High Courts were stated to have been appointed as on 2.12.2019 as against 115 in 2017 and 108 in 2018 and, thus, there is little doubt, keeping in mind the retirement discussed in the last order, that we would have less High Court judges adorning to the Bench on 1st January 2020 than on 1st January 2018!

There is no doubt that the collegium of the High Court are vested with the important responsibility to make recommendations six months in advance and needless to say that the responsibility must be fulfilled qua the pending 197 recommendations to be made.

Learned Attorney General sought to emphasis that the solutions have to be found in respect of the larger canvas but then we are of the view that to begin with a

micro level analysis is necessary to have an ultimate macro level solution. We are, thus, confining ourselves at present to the aspect of 213 names pending with the Government/Supreme Court collegium.

We have sought to emphasis to the learned Attorney General that this is not an adversarial consideration but to see that the process works better and within the constitutional scheme as exists on date qua the issue of appointment of Judges. To analyse the data and find a solution, we think it appropriate that the pendency of these 213 names should be placed in tabular forms under different heads, i.e.,

- (i) date when the recommendation was made by the High Court collegium;
- (ii) date when the recommendation was forwarded to the collegium after consulting with the State Government by the Law Ministry;
- (iii) the time period between these two dates;
- (iv) the date when the collegium cleared the names;
- (v) the time period;
- (vi) the date when the names were forwarded to the office of the Prime Minister;
- (vii) the time period taken for the same;
- (viii) the date when the warrants of appointment were issued;

(ix) the time period taken for the same.

A similar exercise be also carried out qua appointments made in 2019.

The aforesaid data would help in the analysis as to how to streamline the system and can be examined by learned Attorney General before submitting the same to us.

Learned Attorney General has taken us to the example of Orissa to contend that out of 12 names recommended by the Orissa High Court collegium, only two names ultimately have been approved by the Supreme Court collegium for both service and bar Judges.

There may be an aspect as to whether the High Court collegium and the Supreme Court collegium with inputs from consultee Judges are on the same page or not - an aspect which can be looked into by the judiciary. There may be cases where Government sent back the names with the recommendation, an aspect emphasized before us. However, in cases where the recommendations of the High Court collegium meets with the approval of the Supreme Court collegium and the Government, at least their appointments must take place within six months. This is not to say that in other cases the process should not be completed within six months.

We are only desirous of making a small beginning as the filling up of vacancies in the subordinate judiciary being expedited through judicial proceedings before this

Court is bound to result in greater flow of cases before the High Court and the High Courts would feel themselves highly inadequate with most of them working around 50% of the strength to deal with this additional flow. This would create a judicial jam at the level of the High Courts. This is our concern as we have found in the example of Orissa High Court. The consequent inability to deal with the cases promptly also generates the dissatisfaction among the litigants and the lawyers.

Different aspects will again be debated on the next date of hearing.

We request the counsels assisting us and the Learned Attorney General to continue to assist us on all subsequent dates.

List on 10th January, 2020.

(ANITA MALHOTRA)
COURT MASTER

(ANITA RANI AHUJA)
COURT MASTER