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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Date of Decision: 05.04.2022**

% **W.P.(CRL) 738/2022 & CRL. M.A. 6253/2022 & 6254/2022**

SUSHIL ARORA

..... Petitioner

Through: Mr.Anuj Chauhan & Mr.Anand,
Advs.

versus

GOVERNEMENT OF NCT OF DELHI AND ORS.

..... Respondents

Through: Mr.Anupam S. Sharma, SPP for CBI
with Ms.Harpreet Kalsi & Mr.Prakash
Airan, Advs.

Mr.Anurag Ahluwalia, CGSC with
Mr.Danish Faraz Khan, Adv. for
DHC.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE NAVIN CHAWLA

VIPIN SANGHI, ACJ. (ORAL)

1. The petitioner has preferred the present writ petition to assail the Notification No. F.6(33)/2009-Judl./1125-1131 dated 15.09.2010 issued by the Lieutenant Governor of NCT of Delhi to the extent that it confers powers of Presiding Officer of the Designated Court and Special Court constituted, *inter alia*, under the Prevention of Corruption Act, 1988 (hereinafter referred

to as the 'Act') to each and every Officer of the Delhi Higher Judicial Service, to be exercisable by each of them with effect from the date of assumption of charge of the post of Presiding Officer or Judge of the Designated Court or Special Court, as the case may be, in pursuance of the transfer or posting orders made by the Chief Justice of the Delhi High Court. The Notification under challenged may be reproduced before proceeding further in the matter:

***“ (TO BE PUBLISHED IN DELHI GAZETTEE PART -IV
EXTRA ORDINARY)***

***GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF
DELHI DEPARTMENT OF LAW, JUSTICE AND LEGISLATIVE
AFFAIRS 8th LEVEL, C-WING, DELHI SECRETARIAT, I.P.
ESTATE, NEW DELHI-110002***

***NO. F. 6(33)/2009-JUDL./1125-1131 Dated to the 15th September,
2010***

NOTIFICATION

NO.F.6(33)/2009-Judl./ In exercise of powers conferred by sub-section (4) of section 9 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (Act 28 of 1987), sub-section (4) of section 23 of the Prevention of Terrorism Act, 2002 (Act 15 of 2002), section 3 of the Maharashtra Control of Organized Crimes Act, 1999 as extended to the National Capital Territory of Delhi, section 14 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Act 33 of 1989), section 5-B of the Suppression of Unlawful Act against safety of Civil Aviation Act, 1982 (Act 66 of 1982), section 6-A of the Anti-Hijacking Act, 1982 (Act 65 of 1982), sub-section (2) of section 36 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (Act 61 of 1985), sub-section (2) of section 153 of the Electricity Act, 2003 (Act 36 of 2003), sub-section (1) of section 3 of Prevention of Corruption Act, 1988, section 7 & 7A of Industrial Disputes Act, 1947 and section 3(d) of the Land Acquisition Act, 1984 and in consultation with the Chief Justice of the High Court of Delhi, the Lt. Governor of the National Capital Territory of Delhi, hereby confers the powers of Presiding Officer of the Designated Court and Special Court constituted under the aforesaid acts on each of the officers of the Delhi Higher Judicial Service, to be exercisable by each of them with effect from the date of assumption of the charge

of the post of Presiding Officer or Judge of the Designated Court or Special Court, as the case may be, in pursuance of the transfer or posting orders made by the Chief Justice of the Delhi High Court.

By order and in the Name of the Lt. Governor of National Capital Territory of Delhi

(Savita Rao) Special Secretary (Law, Justice & L.A.) ”

(emphasis supplied)

2. The submission of the learned counsel for the petitioner is that Section 3 of the Act empowers the Central Government or the State Government, by Notification in the Official Gazette, to “*appoint as many special Judges as may be necessary for such area or areas or for such case or group of cases as may be specified in the notification to try*” the offences, namely, any offences punishable under the Act and any conspiracy to or any attempt to commit or any abetment of any of the offences punishable under the Act. Section 3(2) states that a person shall not be qualified for appointment as a Special Judge under the said Act, unless he is or has been a Sessions Judge or an Additional Sessions Judge, or an Assistant Sessions Judge under the Code of Criminal Procedure, 1973.

3. Mr. Chauhan submits that the impugned Notification seeks to confer the powers of Presiding Officer of the Designated Court/Special Court, on the Officer of the Delhi Higher Judicial Service from the date of assumption of the charge of the post of Presiding Officer, or Judge of the Designated Court or Special Court, in pursuance of the transfer or posting orders made by the Chief Justice of the Delhi High Court. He submits that there is no “*appointment*” made by the impugned Notification in terms of Section 3(1) of the Act. He submits that “*conferment*” of powers cannot be equated with “*appointment*” as a special judge under the Act. He further submits that the

power is exercisable by the Central Government or the State Government by issuance of Notification in the Official Gazette. However, the purport of the impugned Notification is that it has been left to the Chief Justice of the Delhi High Court to confer the power of a Designated Court/Special Court, by resort to issuance of transfer or posting orders of the officers of the Delhi Higher Judicial Service. This, according to him, is excessive delegation of the statutory functions – which the Central Government or the State Government are obliged to discharge under Section 3(1) of the Act, upon the Chief Justice of the Delhi High Court, and is not permissible.

4. We have considered the submissions of learned counsel for the petitioner. Section 3 of the Act reads as follows:

“3. Power to appoint special Judges.—(1) The Central Government or the State Government may, by notification in the Official Gazette, appoint as many special Judges as may be necessary for such area or areas or for such case or group of cases as may be specified in the notification to try the following offences, namely:—

(a) any offence punishable under this Act; and

(b) any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified in clause (a).

(2) A person shall not be qualified for appointment as a special Judge under this Act unless he is or has been a Sessions Judge or an Additional Sessions Judge or an Assistant Sessions Judge under the Code of Criminal Procedure, 1973 (2 of 1974)”

5. A reading of Section 3(i) shows that the Central Government or the State Government are empowered to appoint as many special Judges as may be necessary to try the offences under the Act, or those involving a conspiracy to commit or attempt to commit, or abet to commit any offences under the Act.

6. Section 3(1) uses the expression “*appoint as many special judges as may be necessary.....*”. This shows that Section 3(1) only seeks to empower the Central Government or the State Government to appoint multiple Special Judges to try the offences punishable under the Act, or those involving a conspiracy to commit or any attempt to commit or abatement of any of the offences punishable under the Act. Nowhere Section 3(1) states that the appointment has to be by name of a particular judicial officer.

7. Sub-Section (2) of Section 3 places the condition on the eligibility of the Appointee under Section 3(1), as a Special Judge. The eligibility condition is that the Appointee is, or has been, a Sessions Judge, or an Additional Sessions Judge, or an Assistant Sessions Judge under the Code of Criminal Procedure.

8. Section 9 of the Code of Criminal Procedure, 1973 mandates that the State Government shall establish a Court of Sessions in every Sessions Division. Every Court of Sessions shall be presided over by a Judge, to be appointed by the High Court. The High Court may also appoint Additional Session Judges and Assistant Session Judges to exercise jurisdiction in a Court of Sessions.

9. Thus, the Special Judges may be appointed from amongst, not only Session Judges/ Additional Session Judges/ Assistant Session Judges who may be in office – since Section 3(2) uses the expression “*unless he is*”, but also others who have been – in the past, Session Judges/ Additional Session Judges/ Assistant Session Judges – since Section 3(2) also uses the expression “*or has been*”.

10. The submission of learned counsel for the petitioner that Section 3(1) uses the expression “*Appoint*”, which, in the context, cannot be equated to the conferment of powers of Presiding Officer of the Designated Court and Special Court constituted under the Act, has no merit. The appointment of the Special Judge has to be from amongst those who are, or have been Session Judges/Additional Session Judges/ or Assistant Session Judges under the Code of Criminal Procedure. The appointment as a Special Judge in the Designated Courts/ Special Court, in respect of a sitting or former Session Judge, Additional Session Judge, or Assistant Session Judge can only mean the conferment of the power to act as a Special Judge under the Act.

11. The Shorter Oxford English Dictionary, Fifth Edition gives one of the meanings of the word “*Appointee*” as “*a person in whose favour a power of appointment is executed*”. The expression “*Appointment*”, inter alia, means “*the action of ordaining or directing what is to be done*”. It also means “*the action of nominating to or placing in an office or post; the position so given.*”

12. One of the meanings of the word “*Conferred*” found in the same dictionary is “*give, grant or bestow (a title, degree, favour etc.)*”

13. Black’s Law Dictionary, Eighth Edition gives the meaning of the expression “*Appointee*” to mean “*1. One who is appointed. 2. One who receives the benefit of a power of appointment.*”

14. The submission of the petitioner that the power to appoint vests with the Central Government and the State Government, and the same stands delegated to the Chief Justice by the Notification dated 15.10.2010 has been

advanced in complete ignorance of Article 235 of the Constitution of India which reads as follows:

“The control over district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of district judge shall be vested in the High Court, but nothing in this article shall be construed as taking away from any such person any right of appeal which he may have under the law regulating the conditions of his service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law.”

15. The Supreme Court has interpreted the scope of the power of control vested in the High Court over subordinate Courts, and has held in ***State of Assam Vs. Ranga Muhammad and Ors.***, AIR 1967 SC 903, as follows:

“In its ordinary dictionary meaning the word ‘to post’ may denote either (a) to station some one at a place, or (b) to assign someone to a post, i.e., a position or a job, especially one to which a person is appointed. See Webster’s New World Dictionary (1962). The dispute in this case has arisen because the State Government applies the first of the two meanings and the High Court the second. In Art. 233 the word ‘posting’ clearly bears the second meaning. This word occurs in association with the words ‘appointment’ and ‘promotion’ and takes its colour from them. These words indicate the stage when a person first gets a position or job and ‘posting’ by association means the assignment of an appointee or promotee to a position in the cadre of District Judges. That a special meaning may be given to a word because of the collocation or words in which it figures, is a well-recognised canon of construction. Maxwell (“On Interpretation of Statutes”, 11th Edn., p. 321 and the following pages) gives numerous examples of the application of this principle, from which one may be given here. The words ‘places of public resort’ assume a very

different meaning when coupled with 'roads and streets' from that which the same words would have if they were coupled with 'houses'. In the same way the word 'posting' cannot be understood in the sense of 'transfer' when the idea of appointment and promotion is involved in the combination. In fact this meaning is quite out of place because 'transfer' operates at a stage beyond appointment and promotion. If 'posting' was intended to mean 'transfer' the draftsman would have hardly chosen to place it between "appointment" and "promotion" and could have easily used the word 'transfer' itself. It follows, therefore, that under Art. 233, the Governor is only concerned with the appointment, promotion and posting to the cadre of District Judges but not with the transfer of District Judges already appointed or promoted and posted to the cadre. The latter is obviously a matter of control of District Judges which is vested in the High Court. This meaning of the word 'posting' is made all the more clear when one reads the provisions of Arts. 234 and 235. By the first of these articles the question of appointment is considered separately but by the second of these articles posting and promotion of persons belonging to the judicial service of the State and holding any post inferior to the post of a District Judge is also vested in the High Court. The word 'post' used twice in the article clearly means the position or job and not the station or place and 'posting' must obviously mean the assignment to a position or job and not placing in-charge of a station or Court. The association of words in Art. 235 is much clearer but as the word 'posting' in the earlier article deals with the same subject – matter, it was most certainly used in the same sense and this conclusion is thus quite apparent.

10. This is, of course, as it should be. The High Court is in the day to day control of Courts and knows the capacity for work of individuals and the requirements of a particular station or Court. The High Court is better suited to make transfers than a Minister. For, however, well-meaning a Minister may be he can never possess the same intimate knowledge of the working of the judiciary as a whole and of

individual Judges, as the High Court. He must depend on his department for information. The Chief Justice and his colleagues know these matters and deal with them personally. There is less chance of being influenced by secretaries who may withhold some vital information if they are interested themselves. It is also well known that all stations are not similar in climate and education, medical and other facilities. Some are good stations and some are not so good. There is less chance of success for a person seeking advantage for himself if the Chief Justice and his colleagues, with personal information, deal with the matter, than when a Minister deals with it on notes and information supplied by a secretary. The reason of the rule and the sense of the matter combine to suggest the narrow meaning accepted by us. The policy displayed by the Constitution has been in this direction as has been explained in earlier cases of this Court. The High Court was thus right in its conclusion that the powers of the Governor cease after he was appointed or promoted a person to be a District Judge and assigned him to a post in cadre. Thereafter, transfer of incumbents is a matter within the control of District Courts including the control of persons presiding there as explained in the cited case.

11. *As the High Court is the authority to make transfers, there was not question of a consultation on this account. The State Government was not the authority to order the transfers. There was, however, need for consultation before D. N. Deka was promoted and posted as a District Judge. That such a consultation is mandatory has been laid down quite definitely in the recent decision of this Court in Chandra Mohan V. State of U.P., Civil Appeals Nos. 1136 and 1638 of 1996, D/-8-8-1966 : (reported in AIR 1966 SC 1987). On this part of the case it is sufficient to say that there was no consultation.” (emphasis supplied)*

16. We may also notice the judgment of the Supreme Court in *Chief Justice of Andhra Pradesh and Others Versus L.V.A. Dixitulu and Others*, (1979) 2 SCC 34, wherein the Supreme Court has observed:

“39. Article 235 is the pivot around which the entire scheme of the Chapter revolves. Under it, “the control over District Courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to persons belonging to the judicial service of a State” is vested in the High Court.

40. The interpretation and scope of Article 235 has been the subject of several decisions of this Court. **The position crystallised by these decisions is that the control over the subordinate judiciary vested in the High Court under Article 235 is exclusive in nature, comprehensive in extent and effective in operation. It comprehends a wide variety of matters. Among others, it includes:**

“(a)(i) Disciplinary jurisdiction and a complete control subject only to the power of the Governor in the matter of appointment, dismissal, removal, reduction in rank of District Judges, and initial posting and promotion to the cadre of District Judges. In the exercise of this control, the High Court can hold inquiries against a member of the subordinate judiciary, impose punishment other than dismissal or removal, subject, however, to the conditions of service, and a right of appeal, if any, granted thereby and to the giving of an opportunity of showing cause as required by Article 311(2).

(ii) In Article 235, the word ‘control’ is accompanied by the word ‘vest’ which shows that the High Court alone is made the sole custodian of the control over the judiciary. The control vested in the High Court being exclusive, and not dual, an inquiry into the conduct of a member of the judiciary can be held by the High Court alone and no other authority (*State of West Bengal v. Nripendra Nath Bagchi* (1966) 1 SCR 771; *Samsher Singh v. State of Punjab*, (1974) 2 SCC 831; and *Punjab and Haryana High Court v. State of Haryana (sub nom Narendra Singh Rao)*, (1975) 1 SCC 843).

(iii) Suspension from service of a member of the judiciary with a view to hold a disciplinary inquiry.

(b) **Transfers, promotions and confirmation of such promotions, of persons holding posts in the judicial service, inferior to that of District Judge. (State of Assam v. S.N. Sen, (1971) 2 SCC 889; and State of Assam v. Kuseswar Saikia, (1969) 3 SCC 505).**

(c) *Transfers of District Judges. [State of Assam v. Ranga Mahammad, (1967) 1 SCR 454, and Chandramouleshwar v. Patna High Court, (1969) 3 SCC 56]*

(d) *Recall of District Judges posted on ex-cadre posts or on deputation on administrative posts (State of Orissa v. Sudhansu Sekhar Misra, AIR 1968 SC 647).*

(e) *Award of selection grade to the members of the judicial service, including District Judges, being their further promotion after their initial appointment to the cadre. [State of Assam v. Kuseswar Saikia, (1969) 3 SCC 505]*

(f) *Confirmation of District Judges, who have been on probation or are officiating, after their initial appointment or promotion by the Governor to the cadre of District Judges under Article 233. [Punjab and Haryana High Court v. State of Haryana, (1975) 1 SCC 843]*

(g) *Premature or compulsory retirement of Judges of the District Courts and of Subordinate Courts. [State of U.P. v. Batuk Deo Pati Tripathi, (1978) 2 SCC 102]”*

x x x x x x x x x
43. Recently, in *State of Uttar Pradesh v. Batuk Deo Pati Tripathi*, this Court succinctly summed up the whole position as follows : [(1978) 2 SCC 102, 112 (para 14)]

“The ideal which inspired the provisions that the control over District Courts and courts

subordinate thereto shall vest in the High Courts is that those wings of the judiciary should be independent of the executive... It is in order to effectuate that high purpose that Article 235 as construed by the Court in various decisions requires that all matters relating to the subordinate judiciary including compulsory retirement and disciplinary proceedings but excluding the imposition of punishments falling within the scope of Article 311 and the first appointments and promotions, should be dealt with and decided upon by the High Courts in the exercise of the control vested in them.” (emphasis supplied)”

17. The submission of the petitioner, if accepted, would completely destroy the independence of the judiciary, as the Central and State Governments would get the right to pick and choose the judicial officers – by name, who should man the Designated/ Special Courts.

18. Thus, it is entirely for the High Court, headed by the Chief Justice to decide on the aspect of transfer and posting of the Officers of the Judicial Service of the State. It is for the High Court to decide as to who should be posted, *inter alia*, to Courts dealing with cases under the Act and, consequently, who should be designated as a Special Judge to deal with cases under the Act. Of course, all such postings/ designations would have to comply with the requirements of Section 3(2) of the Act.

19. Thus, whenever the Chief Justice of the Delhi High Court transfers and posts a member of the Delhi Higher Judicial Service, who has been, or is, a Sessions Judge, Additional Sessions Judge, or Assistant Sessions Judge to preside over a Designated Court or Special Court – specially designated or created to deal with cases under the Act, by virtue of the impugned

notification dated 15.09.2010, the Presiding Officer of such Designated or Special Court stands appointed under Section 3(1) of the Act. The impugned notification makes that appointment of the Special Judge under Section 3(1) of the Act, by designation/ ex-officio. There is nothing to suggest that each such “appointment” by the Central Government or the State Government, has to be by name.

20. Thus, we find no merit in the said petition and accordingly, dismiss the same.

APRIL 5, 2022
N.Khanna

VIPIN SANGHI, ACJ

NAVIN CHAWLA, J

भारतमेव जयते