

UPON hearing the counsel the Court made the following

O R D E R

We are facing the problem raised in these petitions on account of the recalcitrant attitude of the Government in not appointing High Court Judges for years together even where the recommendations have been cleared by the Collegium.

There are two special leave petitions, one filed by M/s. Solar Power Developers Association & Ors. which has by the impugned order been impleaded as a party at their request and the other by the Government of India. The matter pertains to investigation by the Government arising from anti-dumping proceedings. It is the say of the learned Additional Solicitor General that while issuing notice there is an absence of reasons inasmuch as the only plea made on behalf of the original petitioners have been recorded while the counsel appearing for ISMA submits that there may be a possibility of irreparable loss.

If we peruse the impugned order, all that the High Court has done is to issue notice in the writ petition and the interlocutory applications calling upon the parties to file responses. This can hardly be a stage of a proceeding where the Supreme Court of the country should be asked to step in.

The real rub is in the fact that the High Court does not find it feasible to accommodate such matters at an early date. This is the direct result of there being inadequacies of the number of High Court Judges including in the capital of the Country where the Delhi High Court is located.

We have put to the learned ASG that the recommendations take months and years to reach the Collegium and thereafter months and years no decisions are taken post the Collegium, the judicial institution of the High Courts is manned by a number of Judges where it will become almost impossible to have an early adjudication even on important issues. Judicial institution is faced with this scenario despite timeline being laid down by the order of this Court in Transfer Petition (Civil) No.2419 of 2019 titled as M/s. PLR Projects Pvt. Ltd. V. Mahanadi Coalfields Limited & Ors. dated 20th April, 2021 which appears to not have moved the Government. The result is that if there is some element of loss being caused by the inability of the judicial institution to take up matters, this is a direct consequence of there being inadequate number of Judges. Delhi High Court will be with less than 50% Judges in a week's time having only 29 Judges out of a strength of 60 Judges while two decades back when one of us (Hon'ble Mr. Justice Sanjay Kishan Kaul) was appointed as a Judge it was as the 32nd Judge of Court whereas the strength was 33 Judges.

We would normally have called upon the parties to approach the High Court to see an early adjudication to the dispute but then we can hardly say so when the High Courts is so manned with less than half the strength. In view of all the aforesaid, the Government must realize that early adjudication of commercial disputes is the necessity for which there has to be adequate number of Judges which in turn would require them to follow the timelines said down in M/s. PLR Projects Pvt. Ltd. (supra).

The factual matrix paints an even a sorer picture of the Government's conduct as the Court, conscious of the urgency of the matter, on 04.6.2021 while issuing notice

called upon counter affidavits to be filed within four weeks and listed the matter on 19.7.2021. We are informed that the Government did not file the counter affidavits and took further four weeks' time to file the counter affidavits necessitating the adjournment till 05th October, 2021. And the special leave petition was filed on 17.7.2021. Thus on one hand, the Government does not deem it expedient to even file the counter affidavits while it has the ability to draw the special leave petitions and file the same before this Court. So much for the urgency expressed by the Government of India in the present proceedings!

We, thus, dismiss the special leave petitions in the terms aforesaid.

Pending applications stand disposed of.

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