

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
TRANSFER PETITION (CIVIL) NO.2419 OF 2019**

M/s. PLR Projects Pvt. Ltd.Petitioner

Versus

Mahanadi Coalfields Ltd. & Ors. ..Respondents

O R D E R

1. The High Courts are in a crisis situation. There are almost 40% vacancies in the High Courts, with many of the larger High Courts working under 50% of their sanctioned strength.
2. We have discussed in detail the aforesaid while dealing with the aspect of appointment of ad hoc Judges under Article 224A of the Constitution of India in WP(C) No.1236/2019. Vide separate order in the aforementioned matter passed today, we have also discussed the process of appointment under Articles 217 & 224 of the Constitution of India.
3. Learned Attorney General has placed before us the appointment position in the High Courts to contend that against the sanctioned strength of 1080 Judges, 664 Judges have been appointed with vacancies of 416

Judges. However, the recommendations received and under process with the Government are 196 leaving 220 recommendations to be received.

4. We cannot but note the importance of the Chief Justices of the High Courts making recommendations in time. The vacancies are known and the norms permit making recommendations up to six months in advance. However, even recommendations for 220 existing vacancies appear not to have been made much less for vacancies, which are going to arise in the next six months.

5. We, thus, once again, emphasise the requirement and desirability of the Chief Justices of the High Courts, who will make endeavour to recommend vacancies as early as possible even if they are not made at one go. We may add that even in the earlier orders we have noted the apparent hesitation of some High Courts to recommend names when the earlier list(s) is in the pipeline. We have opined that there is no such impediment to initiate a new process without waiting for the result of the earlier recommendations.

6. We had handed over a chart in the previous proceedings to the learned Attorney General of the names recommended from the High Courts which were still pending with the Government for more than six months, numbering 45. The last couple of weeks has seen progress in this behalf and those names have reached the Collegium. The second was the

list of old proposals in pipeline pending with the Government of India after the Supreme Court Collegium recommendations numbering 10. These have been pending for considerable period of time. On the last date of hearing, the learned Attorney General had made a statement that a decision would be taken in this behalf within the next three months. Six names reiterated by the Supreme Court Collegium a second time, are also awaiting appointment.

7. Learned Attorney General did not differ with the requirement of time bound schedule for filling the vacancies at every stage though he emphasised that the trigger for filling up of the vacancies is the recommendations made by the Chief Justices of the High Courts. However, once the recommendations are made, there are two stages at which the matter rests with the Government – the first when the Ministry processes the names; and the second post the Collegium of the Supreme Court taking a call in recommending such of the names as are approved by the Collegium.

8. Insofar as the Judiciary is concerned, the second stage after the recommendations are made by the Collegium of the High Courts is the time period taken by the Collegium of the Supreme Court in consulting the consultee Judge(s) to take a call on those names.

9. We have looked at the Memorandum of Procedure (for short 'MoP') as finalised by the Supreme Court Collegium on 10.3.2017 (which is identical to the MoP of 1999 subsisting earlier on these aspects) where certain timelines have been stated for appointment of Judges to the High Court. In terms of the timeline prescribed in the MoP, the relevant paras 21, 24 & 24.1 of the existing MoP are as under:

- a. States may take not more than six weeks to send their views. (Cl. 21)
- b. The Central Government can presume no objection of the State Government, if their views are not received within six weeks. (Cl. 21)
- c. No timeline prescribed for the Central Government to forward recommendations.
- d. The Chief Justice of India to send recommendations/advise to the Law Minister within four weeks. (Cl. 24)
- e. The Law Minister to put up the proposal to the Prime Minister within three weeks for advise of the President. (Cl. 24.1)

10. It was submitted that if this Court considers laying down timelines, it would be contrary to the observations made in the Third Judge's case (1998) 7 SCC (Special Reference 1 of 1998). In para 31, the Court referred the Second Judge's case and observed as follows:

“31. In the context of the judicial review of appointments, the majority judgment in the Second Judges case said: (SCC pp.707-08, para 480)

“Plurality of Judges in the formation of the opinion of the Chief Justice of India, as indicated, is another inbuilt check against the likelihood of arbitrariness or bias..... The judicial element being

predominant in the case of appointments...., as indicated, the need for further judicial review, as in other executive actions, is eliminated."

The judgment added : (SCC p.708, para 482)

"Except on the ground of want of consultation with the named constitutional functionaries or lack of any condition of eligibility in the case of an appointment, these matters are not justiciable on any other ground...."

It is not possible to accept this contention since the above observations of the Court deal with the judicial review of particular appointment and not such aspects of the appointment process like delay.

11. In the conspectus of the aforesaid and in order to facilitate timely appointment, we are of the view that it would be advisable to follow the following timelines in addition to the aforesaid:

- i. The Intelligence Bureau (IB) should submit its report/inputs within 4 to 6 weeks from the date of recommendation of the High Court Collegium, to the Central Government.
- ii. It would be desirable that the Central Government forward the file(s)/recommendations to the Supreme Court within 8 to 12 weeks from the date of receipt of views from the State Government and the report/input from the IB.
- iii. It would be for the Government to thereafter proceed to make the appointment immediately on the aforesaid consideration and undoubtedly if Government has any reservations on suitability or in public interest, within the same period of time it may be sent back to the Supreme

Court Collegium with the specific reasons for reservation recorded.

If the Supreme Court Collegium after consideration of the aforesaid inputs still reiterates the recommendation(s) unanimously (Cl. 24.1), such appointment should be processed and appointment should be made within 3 to 4 weeks.

12. We are conscious that the aforesaid exercise is collaborative in nature and we would expect promptness in this process to facilitate the larger cause of dispensation of timely justice.

13. With the above directions, we close this proceeding.

.....CJI
[S.A.BOBDE]

.....J.
[SANJAY KISHAN KAUL]

.....J
[SURYA KANT]

NEW DELHI;
APRIL 20, 2021.