Supreme Court of India

CASE NO.:

Transfer Case (civil) 22 of 2001

PETITIONER:

BRIJ MOHAN LAL

Vs.

RESPONDENT:

UNION OF INDIA & ORS.

DATE OF JUDGMENT: 06/05/2002

BENCH:

B.N. Kirpal, K.G. Balakrishnan & Arijit Pasayat

JUDGMENT:

WITH [T.C. No. 23/2001, SLP No. 7870/2001, SLP No. 10645/2001and T.P. No. 407-410/2001] J U D G M E N T ARIJIT PASAYAT, J.

All these cases relate to the establishment and functioning of Courts described as Fast Track Courts and, therefore, are disposed of by this common judgment. The Eleventh Finance Commission (hereinafter referred to as the 'Finance Commission') allocated Rs.502.90 crores under Article 275 of the Constitution of India, 1950 (in short 'the Constitution') for the purpose of setting up of 1734 Courts in various States to deal with long pending cases, particularly, Sessions cases. As allocation of funds made by the Finance Commission stipulated time bound utilization within a period of five years, various State Governments were required to take necessary steps to establish such Courts. It appears that the Finance Commission had suggested that the States may consider re-employment of retired judges for limited period, for the disposal of pending cases, since these Courts were to be ad hoc in the sense that they would not be a permanent addition to the number of Courts within a particular State. Challenge was made to the Scheme known as the Fast Track Courts Scheme in various High Courts, primarily on the ground that there was no constitutional sanction for employment of retired judges and effective guidelines were not in operation. It was also highlighted that infrastructural facilities were not available so as to make Scheme a reality. Several such deficiencies were pointed out. A plea was

made that instead of retired officers, eligible members of the Bar should be considered for appointment.

Stand of the Union of India on the other hand was that on the recommendations of the Finance Commission, a note was prepared by the Department of Justice, Government of India. There is no mandatory requirement for appointment of retired Sessions/Additional Sessions Judges or other officers. Ad hoc promotion of judicial officers was also contemplated. It was pointed out that consequential vacancies created on account of ad hoc promotions can be filled up by a special drive so that there is no shortfall in the personnel of the lower Courts.

Learned counsel appearing for the various parties were unanimous on one important aspect i.e. the problems created by long pendency of cases in different Courts all over the country. It was also conceded that any effort for reducing the pendency is a welcome step. Keeping in view the importance of the matter, learned counsel for the parties were asked to give their suggestions. Mr. Harish N. Salve, learned Solicitor General has given several suggestions with which we shall deal later. Learned counsel for the other parties have more or less agreed to the suggestions, except to the suggestion regarding appointment of retired judges, more particularly, those with adverse service records.

The anxiety of all concerned about quick dispensation of justice has been succinctly stated by one of us (Hon'ble Justice Kirpal) in All India Judges Association & Ors. v. Union of India & Ors. (JT 2002 [3] SC 503) in the following words:

"An independent and efficient judicial system is one of the basic structures of our Constitution. If sufficient number of judges are not appointed, justice would not be available to the people, thereby undermining the basic structure. It is well known that justice delayed is justice denied. Time and again the inadequacy in the number of judges has adversely been commented upon. Not only have the Law Commission and the standing committee of Parliament made observations in this regard, but even the head of the judiciary, namely, the Chief Justice of India has had more occasions than once to make observations in regard thereto. Under the circumstances, we feel it is our constitutional obligation to ensure that the backlog of the cases is decreased and efforts are made to increase the disposal of cases. Apart from the steps which may be necessary for increasing the efficiency of the judicial officers, we are of the opinion that time has now come for protecting one of the pillars of the Constitution, namely, the judicial system, by directing increase, in the first instance, in the judge strength from the existing ratio of 10.5 or 13 per 10 lakhs people to 50 judges for 10 lakh people. We are conscious of the fact that overnight these vacancies cannot be filled. In order to have additional judges, not only the posts will have to be created but infrastructure required in the form of additional court rooms, building, staff, etc., would also have to be made available. We are also aware of the fact that a large number of

vacancies as of today from amongst the sanctioned strength remain to be filled. We, therefore, first direct that the existing vacancies in the subordinate courts at all levels should be filled, if possible, latest by 31st March, 2003, in all the States. The increase in the judge strength to 50 judges per 10 lakh people should be effected and implemented with the filling up of the posts in a phased manner to be determined and directed by the Union Ministry of Law, but this process should be completed and the increased vacancies and posts filled within a period of five years from today. Perhaps increasing the judge strength by 10 per 10 lakh people every year could be one of the methods which may be adopted thereby completing the first stage within five years before embarking on further increase if necessary."

The following observations of a Seven Judge Bench in a recent decision [P. Ramachandra Rao v. State of Karnataka (JT 2002 (4) SC

92)] are also relevant:

"A perception of the cause for delay at the trial and in conclusion of criminal proceedings is necessary so as to appreciate whether setting up bars of limitation entailing termination of trial or proceedings can be justified. The root cause for delay in dispensation of justice in our country is poor judge-population ratio. Law Commission of India in its 120th report on man power planning in Judiciary (July 1987), based on its survey, regretted that in spite of Article 39A added as a major Directive Principle in the Constitution by 42nd amendment (1976), obliging the State to secure such operation of legal system as it promotes justice and to ensure that opportunities for securing justice are not denied to any citizen. Several reorganization proposals in the field of administration of justice in India have been basically patch work, ad hoc and unsystematic solutions to the problem. The judge-population-ratio in India (based on 1971 census) was only 10.5 judges per million population while such ratio was 41.6 in Australia, 50.9 in England, 75.2 in Canada and 107 in Unites States. The Law Commission suggested that India required 107 judges per million of Indian population; however to begin with the judge strength needed to be raised to five-fold, i.e. 50 judges per million population in a period of five years but in any case not going beyond ten years. Touch of said sarcasm is difficult to hide when the Law Commission observed (in its 120th report, ibid) that adequate reorganization of the Indian Judiciary is at the one and at the same time everybody's concern and, therefore, nobody's concern."

We find substance in the stand taken by the learned counsel who have highlighted the non-desirability of appointing judicial officers who did not carry good reputation so far as their honesty and integrity is concerned. It is to be noted that in All India Judges' Association v. Union of India and others [(1992) 1 SCC 119] and in All India Judges' Association and Ors. v. Union of India and Ors. [(1993) 4 SCC 288], this Court took note of the non-desirability to grant the benefit of two years extension in service i.e. from 58 years to 60 years in the case of officers who were

not found to be of continued utility. In each case an evaluation of the service records was directed to be undertaken to find out whether the officer has or lacks potentiality for getting such benefit.

The qualities desired of a judge can be simply stated: 'that if he be a good one and that he be thought to be so'. Such credentials are not easily acquired. The judge needs to have 'the strength to put an end to injustice' and 'the faculties that are demanded of the historian and the philosopher and the prophet'. A few paragraphs from the book "Judges" by David Pannick which are often quoted need to be set out here:

"The judge has burdensome responsibilities to discharge. He has power over the lives and livelihood of all those litigants who enter his court.His decisions may well affect the interests of individuals and groups who are not present or represented in court. If he is not careful, the judge may precipitate a civil war or he may accelerate a revolution. He may accidentally cause a peaceful but fundamental change in the political complexion of the country.

* * * * Judges today face tribulations, as well as trials, not contemplated by their predecessors.Parliament has recognized the pressures of the job by providing that before the Lord Chancellor recommends anyone to the Queen for appointment to the Circuit Bench, the Lord Chancellor 'shall take steps to satisfy himself that the person's health is satisfactory'. This seems essential in the light of the reminiscences of Lord Roskill as to the mental strain which the job can impose. Lord Roskill added that, in his experience, 'the work load is intolerable: seven days a week, 14 hours a day' * * * * He [judge] is a symbol of that strange mixture of reality and illusion, democracy and privilege, humbug and decency, the subtle network of compromises, by which the nation keeps itself in its familiar shape."

Burger C.J. of the American Supreme Court once observed: "A sense of confidence in the Courts is essential to maintain the fabric of ordered liberty for a free people and it is for the subordinate judiciary by its action and the High Court by its appropriate control to ensure it".

One of the pleas taken by the parties questioning constitutional validity of the Fast Track Courts Scheme is that Constitution does not envisage establishment of Fast Track Courts. This plea is clearly without any substance. As observed by a nine-Judge Bench of this Court in Supreme Court Advocates-on-Record Association and Ors. v. Union of India [(1993) 4 SCC 441], appointment of a person to be a District Judge rests with the Governor, but he cannot make the appointment unless there has been an effective and meaningful consultation with the High Court or the High Court has recommended the appointment. In order that the requirement of consultation does not end up as an empty formality, in the event of difference of opinion, there must be an effective interchange of viewpoints. In cases governed by Article 233(2), as a matter of rule, the High Court's recommendation must be accepted. Departure from the opinion of the

High Court should be a rare event. The Constitution relies on the collective wisdom of the High Court as a body and not that of any single individual. Though the Fast Tract Courts Scheme is envisaged by the Central Government on the basis of the views indicated by the Finance Commission, yet appointments to the Fast Track Courts are to be made by the High Court keeping in view the modalities set out. Therefore, merely because the suggestion has stemmed from the Central Government; it cannot be said that there has been any violation of any constitutional mandate. It is to be noted that Chapter VI of the Constitution deals with Subordinate Courts. While Article 233relates to the recruitment to the District Judges, Article 234 relates to the recruitment of members of the judicial service of the State other than District Judges. The power of appointment under Article 234does not include the power to confirm the promotion of judicial officers other than judicial officers which is vested exclusively in the High Court by Article 234. Any rule which provides that the authority belongs to the Governor in consultation with the High Court, shall be void, as observed by this Court in State of Assam and Anr. v. S.N. Sen and Anr. [1971 (2) SCC 889]. While the promotion of District Judges shall be in the hands of the Governor acting in consultation with the High Court in terms of Article 235, the posting and promotion etc. of officers of the State Judicial Services other than the District Judges lie exclusively in the hands of the High Court. The word "control" referred to in Article 235 is used in a comprehensive sense to include general superintendence of the working of the Subordinate Courts. In other words the control vested in the High Court under this Article is complete control, subject only to the power of the Governor in the matter of appointment and promotion of District Judges. The provision under this Article is to ensure independence of judiciary. Above being the position there is nothing constitutionally improper in the scheme. It is the High Court which has to play a pivotal role in the implementation of the scheme for its effective implementation and achievement of the above objectives, of course, complying with the constitutional requirements embodied in relevant provisions of Chapter VI of the Constitution.

Keeping in view the laudable objectives with which the Fast Tract Courts Scheme has been conceived and introduced, we feel the following directions, for the present, would be sufficient to take care of initial teething problems highlighted by the parties:

Directions by the Court:

1. The first preference for appointment of judges of the Fast Track Courts is to be given by ad-hoc promotions from amongst eligible judicial officers. While giving such promotion, the High Court shall follow the procedures in force in the matter of promotion to such posts in Superior/Higher Judicial Services.

2. The second preference in appointments to Fast Track Courts shall be given to retired judges who have good service records with no adverse comments in their ACRs, so far as judicial

acumen, reputation regarding honesty, integrity and character are concerned. Those who were not given the benefit of two years extension of the age of superannuation, shall not be considered for appointment. It should be ensured that they satisfy the conditions laid down in Article 233(2) and 309 of the Constitution. The concerned High Court shall take a decision with regard to the minimum- maximum age of eligibility to ensure that they are physically fit for the work in Fast Track Courts.

3. No Judicial Officer who was dismissed or removed or compulsorily retired or made to seek retirement shall be considered for appointment under the Scheme. Judicial Officers who have sought voluntary retirement after initiation of Departmental proceedings/inquiry shall not be considered for appointment.

4. The third preference shall be given to members of the Bar for direct appointment in these Courts. They should be preferably in the age group of 35-45 years, so that they could aspire to continue against the regular posts if the Fast Track Courts cease to function. The question of their continuance in service shall be reviewed periodically by the High Court based on their performance. They may be absorbed in regular vacancies, if subsequent recruitment takes place and their performance in the Fast Track Courts is found satisfactory. For the initial selection, the High Court shall adopt such methods of selection as are normally followed for selection of members of the Bar as direct recruits to the Superior/Higher Judicial Services.

5. Overall preference for appointment in Fast Track Courts shall be given to eligible officers who are on the verge of retirement subject to they being physically fit.

6. The recommendation for selection shall be made by a Committee of at least three Judges of the High Court, constituted by the Chief Justice of the concerned High Court in this regard. The final decision in the matter shall be taken by the Full Court of the High Court.

7. After ad-hoc promotion of judicial officers to the Fast Track Courts, the consequential vacancies shall be filled up immediately by organizing a special recruitment drive. Steps should be taken in advance to initiate process for selection to fill up these vacancies much before the judicial officers are promoted to the Fast Track Courts, so that vacancies may not be generated at the lower levels of the subordinate judiciary. The High Court and the State Government concerned shall take prompt steps to fill up the consequential as well as existing vacancies in the subordinate Courts on priority basis. Concerned State Government shall take necessary decisions within a month from the receipt of the recommendations made by the High Court.

8. Priority shall be given by the Fast Track Courts for disposal of those Sessions cases which are pending for the longest period of time, and/or those involving under-trials. Similar shall be the approach for Civil cases i.e. old cases shall be given priority.

9. While the staff of a regular Court of Additional District and Sessions Judge includes a Sessions Clerk and an office Peon, work in Fast Track Courts is reported to be adversely affected due to shortage of staff as compared to regular Courts performing same or similar functions. When single Orderly or Clerk proceeds on leave, work in Fast Track Courts gets held up. The staff earmarked for each such Court are a Peshkar/Superintendent, a Stenographer and an Orderly. If the staff is inadequate, High Court and the State Government shall take appropriate decision to appoint additional staff who can be accommodated within the savings out of the existing allocations by the Central Government.

10. Provisions for the appointment of Public Prosecutor and Process Server have not been made under the Fast Track Courts Scheme. A Public Prosecutor is necessary for effective functioning of the Fast Track Courts. Therefore, a Public Prosecutor may be earmarked for each such Court and the expenses for the same shall be borne out of the allocation under the head 'Fast Track Courts'. Process service shall be done through the existing mechanism.

11. A State Level Empowered Committee headed by the Chief Secretary of the State shall monitor the setting up of earmarked number of Fast Track Courts and smooth functioning of such Courts in each State, as per the guidelines already issued by the Government of India.

12. The State Governments shall utilize the funds allocated under the Fast Track Courts Scheme promptly and will not withhold any such funds or divert them to other uses. They shall send the utilization certificates from time to time to the Central Government; who shall ensure immediate release of funds to the State Governments on receipt of required utilization certificates.

13. At least one Administrative Judge shall be nominated in each High Court to monitor the disposal of cases by Fast Track Courts and to resolve the difficulties and shortcomings, if any, with the administrative support and cooperation of the concerned State Government. State Government shall ensure requisite cooperation to the Administrative Judge.

14. No right will be conferred on Judicial Officers in service for claiming any regular promotion on the basis of his/her appointment on ad-hoc basis under the Scheme. The service rendered in Fast Track Courts will be deemed as service rendered in the parent cadre. In case any Judicial Officer is promoted to higher grade in the parent cadre during his tenure in Fast Track Courts, the service rendered in Fast Track Courts will be deemed to be service in such higher grade.

15. The retired Judicial Officers who are appointed under the Scheme shall be entitled to pay and allowances equivalent to the pay and allowance they were drawing at the time of their retirement, minus total amount of pension drawn/payable as per rules.

16. Persons appointed under the Scheme shall be governed, for the purpose of leave, reimbursement of medical expenses, TA/DA and conduct rules and such other service benefits, by the rules and regulations which are applicable to the members of the Judicial Services of the State of equivalent status.

17. The concerned High Court shall periodically review the functioning of the Fast Track Courts and in case of any deficiencies and/or shortcoming, take immediate remedial measures, taking into account views of the Administrative Judge nominated.

18.The High Court and the State Government shall ensure that there exists no vacancy so far as the Fast Track Courts are concerned, and necessary steps in that regard shall be taken within three months from today. In other words, steps should be taken to set up all the Fast Track Courts within the stipulated time.

It was submitted by learned counsel appearing for some of the parties that officers with tainted images have been appointed as Fast Track Courts. It is for the High Court of the concerned State to see if any undesirable person not fulfilling the requirements indicated in our directions above has been appointed, and to take immediate steps for terminating the appointment.

Copies of the judgment be sent by the Registry of this Court to each High Court and the concerned State Government for ensuring compliance with our directions.

Though these petitions are to be treated as closed, Quarterly Status Reports shall be submitted by each High Court and the State Government. First such report shall be submitted by the end of August, 2002. The reports shall be placed for consideration before the Bench to be fixed by Hon'ble the Chief Justice of India.

....J.

(B.N. KIRPAL) ....J.

(K.G. BALAKRISHNAN) .J.

(ARIJIT PASAYAT) May 6, 2002