

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (C)NO.748 OF 2017

SWAMI OM JI & ANR.PETITIONERS

VERSUS

UNION OF INDIA THR. CABINET SECRETARY & ORS.RESPONDENTS

O R D E R

1. The application for permission to appear and argue in person is allowed.

2. There are two petitioners in this case. Petitioner No.1 is - Swami Om Ji. He claims to be resident of C-36, Chairman Market, Gali No.1, Khajuri Khas Colony, Delhi - 94. Neither the pleadings nor the documents appended to the petition reveal his source(s) of livelihood. It is therefore, that we enquired of him, what he does for his living. He informed us, that he is a man of religion, and is a preacher. He claims a following of an unlimited number of disciples.

3. Petitioner No.2 is Mukesh Jain. The pleadings of the petition reveal, that Mukesh Jain resides at the same address as petitioner No.1. We did not need to enquire about his educational background, since the same is depicted in the letter of urgency appended to the writ petition. The letter discloses, that he is an engineer from I.I.T. Roorkee (in Hindi medium). He claims to have a factory wherein he is carrying on an aluminium related industry. He informed us, that his son is also an engineering graduate, and has his separate industrial unit.

4. In the letter of urgency, both the petitioners claimed,

that they are not trained advocates, and are merely ordinary citizens of the country.

5. At the commencement of hearing, we enquired from the petitioners, why they had approached this Court at the last moment, keeping in mind that the oath ceremony of Hon'ble Mr. Justice Dipak Misra as Chief Justice of India is scheduled after just one working day of the present hearing. In order to demonstrate to us, that the petitioners did not approach this Court at the last juncture, it was submitted, that this exercise, to challenge the appointment procedure, to the office of Chief Justice of India, was taken up by the petitioners about a year ago. We were informed, that the petitioners had been making representations to the Central Government, including the Union Law Minister and the President of India, for taking remedial steps. It was pointed out, that as a last resort, they approached this Court since no action had been taken at the level of the Government. It was also submitted, that the petitioners were not informed anything in this behalf, by any of those to whom they had submitted their representations.

6. The stance adopted by the petitioners all the more affirms our view, that the petitioners had approached this Court at the last juncture, only one working day before the oath of office of the next Chief Justice. We say so because, even though the petitioners had raised a concrete legal proposition, and were fully alive of their contentions well before the event was to take place, they chose to avail of their legal remedy at the very last moment.

7. It is also necessary to record, that the instant petition

came to be filed in the Registry of this Court on 18.08.2017 but the same had objections. The petitioners did not remove the objections till 22.08.2017. Suddenly they removed the objections on 23.08.2017. The objections were removed late in the evening. Having removed the objections, the petitioners insisted with the Registry to post the matter for hearing, under all circumstances, today, i.e., on 24.08.2017, the very next day after removing the objections. Obviously realizing, that thereafter, the matter would be rendered infructuous. Even though, such a course was totally inappropriate, yet to demonstrate that the Courts of justice are open to all, and even till the very last moment, liberty was granted to the Registry to list this case for hearing today. The Registry was also directed to inform the petitioners about the hearing of the case today.

8. The petitioners are accordingly before this Court.

9. During the course of hearing, we also enquired from the petitioners, whether they had any adverse reason against the person to be administered the oath of office as Chief Justice of India on 28.08.2017. We wanted to ascertain whether there was any reason which had compelled the petitioners to file this petition. The petitioners categorically answered in the negative. It is therefore apparent, that the instant petition is not based on any adverse material concerning the succeeding Chief Justice of India. Even a perusal of the pleadings in this case reveals, that no allegations whatsoever have been levelled against the succeeding incumbent. As a matter of fact, we were told, that the solitary grievance of the petitioners was, that the provisions of the Constitution of India

had been violated, and that, was the reason that prompted the petitioners to approach this Court. And that was the reason, why the petitioners sought hearing, under all circumstances, before oath could be administered.

10. Before we venture to determine the merits of the controversy raised by the petitioners, it is necessary to place on record, that the succeeding Chief Justice of India in question, was appointed as an Additional Judge of the Orissa High Court on 17.01.1996, and was transferred to the Madhya Pradesh High Court on 03.03.1997. He was made a permanent Judge on 19.12.1997. Thereafter, he assumed charge of the office of Chief Justice of the Patna High Court on 23.12.2009, and then charge of the office of the Chief Justice of the Delhi High Court on 24.05.2010. He was eventually elevated as a Judge of the Supreme Court of India on 10.10.2011. The necessity to record the aforesaid factual position emerges from the fact, that despite the long tenure of the concerned incumbent, the petitioners have no allegations against him during his entire tenure commencing from 1996 till today.

11. We shall now endeavour to deal with the contentions raised by the petitioners on merits. It was the submission of the petitioners, that the procedure adopted in appointing the next Chief Justice of India, was in clear violation of Articles 124(2), 124(3) and 124A of the Constitution of India.

12. Insofar as the violation of Article 124(2) of the Constitution is concerned, it was submitted, that no recommendation for the appointment as Chief Justice of India can be made by the incumbent Chief Justice of India. It was submitted, that the

recommendation by the incumbent Chief Justice of India by itself, was unacceptable in law. We will endeavour to deal with the instant contention, but before we do so, it is necessary to record, that the recommendation made by the incumbent Chief Justice of India, is not under challenge in the prayers made in the instant petition. Insofar as the instant contention is concerned, we are of the view, that the interpretation placed by the petitioners is wholly misconceived. Article 124(2) requires the President of India to consult the Judges of the Supreme Court and of the High Courts in the States "as the President may deem necessary for the purpose" for appointment of the Chief Justice of India. This Court through Constitution Benches has interpreted and declared the legal position, which requires the incumbent Chief Justice of India, to make an appropriate recommendation of the successor Chief Justice of India, to the President of India. The submission therefore is wholly misconceived.

13. We enquired from petitioner No.1 whether he had consulted any counsel on the interpretation of Article 124(2) of the Constitution, before approaching this Court. He informed us, that he had consulted Mr.S.S.Tiwari, Advocate, who had informed him, that he would not be willing to appear for him to canvass the instant proposition. It was submitted, that he was advised, that the raising of such a proposition would result in extreme consequences. The pointed assertion made was that this Court could order the petitioners' imprisonment. We thereafter enquired from the petitioner, whether he had examined the issue by reading any judgment of this Court with reference to the interpretation of

Article 124(2). Petitioner No.1 informed us, that he believed in the Constitution. It was pointed out, that the petitioner accepted the Constitution as his religion. And therefore, it was asserted, that it was not necessary for him to read any judgment. Swami Om Ji, petitioner No.1, also told us, that he being a layman does not know any judgment. It surprises us, that laymen have the courage of approaching this Court against legal advice, as well as unmindful of consequences, of which they are made aware.

14. Petitioner No.2 affirmed the position adopted by petitioner No.1, in response to our queries, when he was advancing submissions.

15. The second contention advanced by the petitioners was based on Article 124(3) of the Constitution, which is extracted hereunder:

"(3) A person shall not be qualified for appointment as a Judge of the Supreme Court unless he is a citizen of India and—

(a) has been for at least five years a Judge of a High Court or of two or more such Courts in succession; or

(b) has been for at least ten years an *advocate* of a High Court or of two or more such Courts in succession; or

(c) is, in the opinion of the President, a distinguished jurist.

Explanation I: In this clause "High Court" means a High Court which exercises, or which at any time before the commencement of this Constitution exercised, jurisdiction in any part of the territory of India.

Explanation II: In computing for the purpose of this clause the period during which a person has been an advocate, any period during which a person has held judicial office not inferior to that of a district judge after he became an advocate shall be included."

We find, that the above-mentioned provision has no applicability whatsoever, insofar as the present controversy is concerned, since Article 124(3) of the Constitution postulates the qualifications for appointment as a Judge of the Supreme Court. We therefore hereby reject the second contention as well. The instant contention also leaves no room for any doubt, that the petitioners have grossly abused the jurisdiction of this Court.

16. The third contention of the petitioners is based on Article 124A of the Constitution. Petitioner No.2, who advanced the instant contention, was aware, that it was based on the Constitution (Ninety-ninth Amendment) Act, 2014. When enquired whether he was aware about the fact, that the aforesaid provision had since been set aside by this Court by a Constitution Bench, he claimed, that the Parliament had enacted Article 124A and no one had the authority to set it aside. The submission advanced by petitioner No.2, based on a provision, which has been declared ultra vires the provision of Constitution of India, is itself wholly misconceived and deserves to be rejected. Yet again, the contention discloses the sorry state of affairs, and the foolhardy attitude of the petitioners.

17. It is also important for us to record, that the petitioners made wild insinuations against the Bench by informing the Bench, that they had been informed, that their petition would be dismissed, and they would be sent to jail, for at least a period of six months, for filing the instant petition. It is submitted, that such a position was indicated to the petitioners by members of

the media. When asked, the petitioners said, that they could not individually identify those members of the media who had tendered the instant advice to them, because they had met them for the first time in the Court premises today.

18. Having given our thoughtful consideration to the submissions recorded above, and our determination thereon, we are of the view, that the instant petition is a purely motivated publicity stunt, and needs to be deprecated in unequivocal terms, in such a manner that persons similarly situated as the petitioners are not encouraged to follow the practice adopted by the petitioners herein. The action of the petitioners in approaching this Court can be described as rash, irresponsible and reckless besides being imprudent and thoughtless. We therefore hereby dismiss the instant petition with costs. Both the petitioners are imposed costs, which are quantified at Rs.10,00,000/- (Rupees ten lakhs) each. Each of the petitioners shall deposit the above costs in the Registry of this Court, which shall be remitted to the Prime Minister's Relief Fund. The petitioners are directed to deposit the above costs, within one month from today. In case the above-mentioned costs imposed on the petitioners are not deposited within the time indicated hereinabove, the Registry is directed to re-list this case for enforcement of costs.

.....CJI.
(JAGDISH SINGH KHEHAR)

.....J.
(Dr.D.Y.CHANDRACHUD)

NEW DELHI;
AUGUST 24, 2017.

ITEM NO.4

COURT NO.1

SECTION-PIL (W)

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition(s) (Civil) No(s).748/2017

SWAMI OM JI & ANR.

Petitioner(s)

VERSUS

UNION OF INDIA THR. CABINET SECRETARY & ORS.

Respondent(s)

(APPLICATION FOR PERMISSION TO APPEAR AND ARGUE IN PERSON)

Date : 24-08-2017 These matters were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD

For Petitioner(s) Petitioners-in-person

For Respondent(s)

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

The application for permission to appear and argue in person is allowed.

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(SATISH KUMAR YADAV)
AR-CUM-PS

(RENUKA SADANA)
ASST.REGISTRAR

(Signed order is placed on the file)