IN THE SUPREME COURT OF INDIA
EXTRAORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (CIVIL) NO ___ OF 2018

Shri. Shanti Bhushan
B-16, Sector 14,
Noida, Uttar Pradesh - 201301 ... Petitioner

Versus

1. The Hon'ble Supreme Court of India
Through the Registrar
Tilak Marg, Supreme Court,
New Delhi, Delhi 110201 ... Respondent No. 1

2.Hon'ble Mr. Justice Dipak Misra,
The Chief Justice of India or his successor in office,
Supreme Court of India,
Tilak Marg, Supreme Court,
New Delhi, Delhi 110201 ... Respondent No. 2

A WRIT PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA TO CLARIFY THE ADMINISTRATIVE AUTHORITY OF THE HON'BLE CHIEF JUSTICE OF INDIA AS THE MASTER OF ROSTER AND FOR LAYING DOWN THE PROCEDURE AND PRINCIPLES TO BE FOLLOWED IN PREPARING THE ROSTER FOR ALLOCATION OF CASES

TO THE HON'BLE JUDGES OF THE SUPREME COURT OF INDIA,

THE HUMBLE PETITION OF THE PETITIONER MOST RESPECTFULLY SHOWETH,

1. The present writ petition raises substantial question of law as to scope and ambit of the administrative powers and their exercise by the Hon'ble Chief Justice of India. As such, this petition raises a very

fundamental issue going to the root of the functioning of the Hon'ble Supreme Court of India and as such is very critical to the interpretation of the Constitution of India and the Rule of Law in India. The Petition is being filed to clarify the administrative authority of the Hon'ble Chief Justice of India as the master of roster and for the laying down of the procedure and principles to be followed in preparing the roster for allocation of cases. The petitioner humbly submits that 'master of roster' cannot be unguided and unbridled discretionary power, exercised arbitrarily by the Hon'ble Chief Justice of India by hand-picking benches of select Judges or by assigning cases to particular Judges. Any such power or its exercise would result in a subversion of democracy and the Rule of Law as guaranteed under Article 14 of the Constitution. The authority of the Hon'ble Chief Justice of India as master of roster is not an absolute, arbitrary, singular power that is vested in the Chief Justice alone and which may be exercised with his sole discretion. Further, such authority vested in the Chief Justice of India must necessarily be exercised by him in consultation with the senior judges of the Supreme Court in keeping with the various pronouncement of this Hon'ble Court. Underlying the evolution of the principle of the collegium is the Hon'ble Supreme Courts dictum that the collective opinion of a collegium of senior judges is much safer than the opinion of the Chief Justice alone. Further, as has been demonstrated in this petition, international best practices are based on objective rules for case allocation that respect collegiality, the relevance of seniority, equality of the Justices, fairness of work distribution, expertise and transparency. Limiting the discretion of the Chief Justice of India in allocating cases in the absence of any procedure requiring consultation and the absence of any substantive rules to prevent conflict are the issues that need to be addressed for an improved administrative management of the Court. The petitioner submits that the administrative function of allocation of cases and determining a

roster by the Chief Justice of India assumes grave significance within the Constitutional scheme that envisions a robust and independent judiciary.

1A. The Petitioner is a senior advocate of this Hon'ble Court. He was the law minister of India from 1977-1999. He is the founding member of the Centre for Public Interest Litigation, an organisation that was formed for the purpose of taking up matters of grave public interest and filing public interest litigation in an organised manner. He is also the founding member of the Campaign for Judicial Accountability and Reforms, an organisation that is committed to working towards a transparent and accountable judiciary.

That the petitioner is a selfless citizen, having no personal interest, or any private or oblique motive in filing the instant petition. There is no civil, criminal, revenue or any other litigation involving the petitioner, which has or could have a legal nexus with the issues involved in this PIL.

The average annual income of the Petitioner for the last three financial years is approximately Rs three crores and PAN number is AACPB3899E

The petitioner has not made any representations to the respondent in this regard because of the extreme urgency of the matter in issue.

That the instant writ petition is based on the information/documents which are in public domain.

2. Respondent No. 1 the Registrar of the Supreme Court and an officer within the meaning of Article 146 of the Constitution read with Order III of the Supreme Court Rules. The term Registrar has been defined in Rule 2(1) (n) (ii) as "the Registrar of the Court and shall include Additional Registrar of the Court."

3. Respondent No. 2 is the Hon'ble Chief Justice of India within the meaning of Article 124 of the Constitution.

The case in Brief:

4. It is a principle that has been settled by judicial pronouncements and conventions of the Hon'ble Supreme Court that the Chief Justice of India is the master of the roster and has the authority to allocate cases to different benches/judges of the Supreme Court. Adherence to this principle is essential to maintain judicial discipline and decorum and for the proper and efficient functioning of the Court. However the power to exercise such authority cannot be used in such a manner as to assert any superior authority by the Chief Justice. It is also a well settled principle of jurisprudence that the Chief Justice is only the first among equals.
5. A roster declares what work is assigned to High Court and Supreme Court judges. 'Master of the Roster' refers to the privilege of the Chief Justice to constitute Benches to hear cases. It is a pre requisite that this power must be exercised in a manner is that fair, just and transparent and in keeping with the high standards of integrity desired from the office of a Chief Justice of India.
6. The office of the Chief Justice of India has some important administrative functions of listing cases and constituting the roster of the Supreme Court. The Chief Justice has an even greater significance in constitutional issues, where large benches of five, seven or nine judges sit. In important constitutional issues therefore the Chief Justice of India wields tremendous power to influence the outcome of a decision by the manner in which he picks a bench. The absolute discretion of the Chief Justice of India in allowing a particular case or disallowing another on oral mentioning is also

another important aspect that needs to be scrutinised in its application and exercise. Thus the manner in which power has been concentrated in the office of the Chief Justice of India raises serious problems relating to constitutionalism and the rule of law.

7. All the judges of the Supreme Court are deemed equal when it comes to hearing and adjudicating cases, but while it comes to administration of the Court, determining the roster for allocation of cases, the Chief Justice is the "first among equals". The Chief Justice of India decides when a case may be listed for hearing and also which judge will hear it. Therefore by extension, the Chief Justice can, keeping in view the pre disposition of a particular judge, assign cases to particular individual judges to achieve a particular pre determined outcome. This in the humble submission of the petitioner is an antithesis to administration by the rule of law and principles of fairness and equity.

8. A three-Judge Bench in *State of Rajasthan vs. Prakash Chand and Others* (1998) 1 SCC 1, held that the Chief Justice of the High Court is the master of the roster and he alone has the prerogative to constitute the benches of the court and allocate cases to the benches so constituted. The Court stated thus:-

> *"From the preceding discussion the following broad CONCLUSIONS emerge. This, of course, is not to be treated as a summary of our judgment and the conclusion should be read with the text of the judgment:*
>
> *(1) That the administrative control of the High Court vests in the Chief Justice alone. On the judicial side, however, he is only the first amongst the equals.*

(2) That the Chief Justice is the master of the roster. He alone has the prerogative to constitute benches of the court and allocate cases to the benches so constituted.

(3) That the puisne Judges can only do that work as is allotted to them by the Chief Justice or under his directions.

(4) That till any determination made by the Chief Justice lasts, no Judge who is to sit singly can sit in a Division Bench and no Division Bench can be split up by the Judges constituting the bench can be split up by the Judges constituting the bench themselves and one or both the Judges constituting such bench sit singly and take up any other kind of judicial business not otherwise assigned to them by or under the directions of the Chief Justice.

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(6) That the puisne Judges cannot "pick and choose" any case pending in the High Court and assign the same to himself or themselves for disposal without appropriate orders of the Chief Justice.

(7) That no Judge or Judges can give directions to the Registry for listing any case before him or them which runs counter to the directions given by the Chief Justice."

9. The same principle in *Prakash Chan*d (supra) was applied as regards the power of the Chief Justice of India and in a recent order dated November 10, 2017, in the matter of *Campaign for Judicial Accountability and Reforms v Union of India* and another, W.P. (Cri) 169/2017, five Judge Bench held,

"There can be no doubt that the Chief Justice of India is the first amongst the equals, but definitely, he exercises certain administrative powers and that is why in Prakash Chand

(supra), it has been clearly stated that the administrative control of the High Courts vests in the Chief Justice alone. The same principle must apply proprio vigore as regards the power of the Chief Justice of India. On the judicial side, he is only the first amongst the equals. But, as far as the roster is concerned, as has been stated by the three-Judge Bench in Prakash Chand (supra), the Chief Justice is the master of the roster and he alone has the prerogative to constitute the Benches of the Court and allocate cases to the Benches so constituted."

Further the Constitution Bench held:

"... neither a two-Judge Bench nor a three-Judge Bench can allocate the matter to themselves or direct the composition for constitution of a Bench. To elaborate, there cannot be any direction to the Chief Justice of India as to who shall be sitting on the Bench or who shall take up the matter as that touches the composition of the Bench. We reiterate such an order cannot be passed. It is not countenanced in law and not permissible."

10. However additionally it is pertinent to note that this judgement was passed in a case where the Chief Justice of India was himself involved since the case related to seeking a Special Investigation into a CBI FIR in the alleged conspiracy to pay bribes for procuring favourable orders in a matter pending before this Hon'ble Court and that too pending before the Bench presided by the Hon'ble Chief Justice of India himself. That pending matter had been heard by the Chief Justice of India in all hearings of the case and hence he was asked to recuse himself from the bench. Despite this, he continued to sit on the bench and passed the order in his own interest. Therefore this judgement is a nullity and vitiated by the rule against bias. The Chief Justice of India could not have heard this case himself quite

apart from exercising his power as master of roster in allocating a bench to hear this case and constituting a Constitution Bench that finally pronounced the order declaring the Chief Justice of India as master of roster. The principle of master of roster cannot be applicable to a case where the Chief Justice of India is himself involved.

11. The legal jurisprudence evolved so far through a catena of cases by this Hon'ble Court requires that the test is not what the judge thinks about his/her bias but whether there is reasonable apprehension of bias in the mind of the party. This Hon'ble Court in the case of *Ranjit Thakur v. Union of India,* (1987) 4 SCC 611 has observed and held as under:

> *"15. The second limb of the contention is as to the effect of the alleged bias on the part of Respondent 4. The test of real likelihood of bias is whether a reasonable person, in possession of relevant information, would have thought that bias was likely and is whether Respondent 4 was likely to be disposed to decide the matter only in a particular way.*
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> *16. It is the essence of a judgment that it is made after due observance of the judicial process; that the court or tribunal passing it observes, at least the minimal requirements of natural justice; is composed of impartial persons acting fairly and without bias and in good faith. A judgment which is the result of bias or want of impartiality is a nullity and the trial "coram non-judice".*
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> *(See Vassiliades v. Vassiliades4.)*
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> *17. As to the tests of the likelihood of bias what is relevant is the reasonableness of the apprehension in that regard in the mind of*

the party. The proper approach for the Judge is not to look at his own mind and ask himself, however, honestly, "Am I biased?"; but to look at the mind of the party before him.

18. Lord Esher in Allinson v. General Council of Medical Education and Registration5 said: "The question is not, whether in fact he was or was not biased. The court cannot inquire into that. . . . In the administration of justice, whether by a recognised legalcourt or by persons who, although not a legal public court, are acting in a similar capacity, public policy requires that, in order that there should be no doubt about the purity of the administration, any person who is to take part in it should not be in such a position that he might be suspected of being biased."

19. In Metropolitan Properties Co. (F.G.C.) Ltd. v. Lannon6 Lord Denning M.R. observed:

". . . in considering whether there was a real likelihood of bias, the court does not look at the mind of the justicehimself or at the mind of the chairman of the tribunal, or whoever it may be, who sits in a judicial capacity. It does not look to see if there was a real likelihood that he would, or did, in fact favour one side at the expense of the other. The court looks at the impression which would be given to other people. Even if he was as impartial as could be, nevertheless if right-minded persons would think that, in the circumstances, there was a real likelihood of bias on his part, then he should not sit."

Supreme Court Rules, 2013 and Handbook of Practice and Procedure, 2017

12. Under Rule 7 of Order III of Supreme Court Rules, the Registrar inter-alia discharges the following functions:

> *"(1) The Registrar shall keep a list of all cases pending before the Court, and shall, at the commencement of each term, prepare and publish on the notice board/website of the Court a list of all cases ready for hearing in each class separately, to be called the "terminal list". The cases in the "terminal list" shall be arranged year wise in each class separately in the order of their registration, and the list shall be updated from time to time,*
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> *(2) From out of the "terminal list" the Registrar shall publish on the notice board/website of the Court at the end of each week a list of cases to be heard in the following week as far as possible in the order in which they appear in terminal list, subject to the directions of the Chief Justice and of the Court, if any, and out of the weekly list shall publish at the end of each day a daily list of cases to be heard by the Court on the following day.*
>
> *In addition, the Registrar shall publish Advance List of miscellaneous matters. From the Advance List, matters will be taken up in Daily List for miscellaneous matters.*
>
> *Subject to general or special orders of Chief Justice, the Registrar shall publish such other lists as may be directed; list matters as may be directed and in such order as may be directed."*
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> Handbook on Practice and Procedure and Office Procedure 2017 (hereinafter referred to as the "handbook"), published by the Supreme Court of India under Article 145 of the Constitution in Chapter V titled "Powers Duties and Functions of Registrar" provides as under:

"3. to keep a list of all cases pending before the Court, and shall, at the commencement of each term, prepare, publish and port on the official website, a list of all cases ready for regular hearing in each class separately, to be called the 'Terminal List';

4. to prepare, publish and port on the official website at the end of each week, a list of cases, from out of the Terminal List, to be heard in the following week, as far as possible in the order in which they appear in Terminal List, subject to the directions of the Chief Justice, if any, and out of the Weekly List, shall publish at the end of each day, a Daily List of cases to be heard by the Court on the following day;

5. to prepare, publish and port on the official website, Advance List, Daily List and Supplementary List of the admission hearing cases;

6. to publish such other Lists, subject to general or special orders of the Chief Justice;

29. to prepare roster under the directions of the Chief Justice;"

Chapter XIII thereof deals with "Listing of Cases" and provides as under:

"1. (a) The Registrar (J-I) shall list the cases before the Benches in accordance with the roster under the directions of the Chief Justice.

(b) All cases, so listed, shall be published in a cause list under the signature of Registrar (J-I) and ported on the official website of the Court."

Under the heading "Cause List and Listing" it is provided as under:

"1. A daily cause list of admission hearing cases shall consist of fresh and pending main cases as also interlocutory applications and miscellaneous applications in main cases –

(a) fresh cases shall be sent for listing by the Filing Counter; and
(b) pending cases, i.e., interlocutory applications, miscellaneous applications, After-notice cases, and final disposal cases, shall be proposed to be listed by the dealing Assistants, unless otherwise ordered.

3. Fresh admission hearing cases shall be included in the daily cause list in chronological order, i.e., in the order of institution."

Said chapter of handbook also provides as under the heading "Cases, Coram and Listing":

"2. Fresh cases are allocated as per subject category through automatic computer allocation, unless coram is given by the Chief Justice or the Filing Counter:

Provided that such categories of fresh cases shall not be listed before a Judge, which have been so directed. Data entry of such cases be made in the computer, which excludes listing of such cases before that Judge.

The admission hearing cases shall be listed in the following manner:

(a) Personal appearance cases;

(b) Settlement cases;

(c)Orders (incomplete cases/ interlocutory applications/ miscellaneous applications);

(d) Fresh cases;

(e) 'After Notice' cases; and

(f) Final Disposal cases.

3. The coram of the Bench where –

(a) a main case has been listed;

(b) notice has been issued till grant of special leave to appeal;

(c) a case has been dismissed, allowed or disposed of; and

(d) a case has been heard in-part at admission hearing stage. shall be updated in the computer for future listing of admission hearing cases.

6. If first coram is not available on a particular day on account of retirement, the case shall be listed before the Judge constituting the second coram. If second coram is also not available, the case shall not be listed on that day.

7. A case directed to be listed before some other Bench or before a Bench of which one of the Judges is not a member shall be listed as per subject category through computer allocation. Such admission hearing cases shall be listed in the next final cause list.

8. A case directed not to be listed before a particular Judge constituting the first coram shall be listed before the Judge constituting the second coram in a different composition, if available. In case of non-availability of the second coram, the case shall be listed through computer allocation as per subject category, after apprising the Judge constituting the second coram.

9. On account of non-availability of the only coram in a case, the case shall be listed as per subject category through computer allocation.

20. Whenever a case is referred by a two-Judge Bench to a larger Bench, the coram be allocated by the Chief Justice

28. If a specific date case could not be listed on a specified date before the Court on account of non-availability of the Bench for any reason, instructions shall be taken from the Presiding Judge as to the next date of listing on the file.

48. No case shall be considered for listing without written orders, except in exceptional circumstances, in which case it shall be followed by written communication/confirmation."

13. The present Petition raises serious questions relating to the functioning of the Registry of the Hon'ble Supreme Court of India and the powers exercised by the Hon'ble Chief Justice of India, inter-alia, in "listing matters" so as to list matters of general public importance and/or of political sensitivity before only certain Benches contrary to the Supreme Court Rules, Handbook of procedure and conventions. It is respectfully submitted that in recent months there have been number of instances in which such powers have been exercised with legal malice by abusing the administrative authority conferred under the Constitution, the Rules, the Handbook of Procedure and the convention on the concerned Respondents. As a result, the matters are being listed in a completely arbitrary and unjust manner so as to defeat interests of justice thereby undermining the administration of justice. The present petition does not seek to question any judicial orders and/or judgments. The present Writ Petition is confined to the scope and ambit of the powers of the Respondents in listing matters and seeks appropriate declaration from this Hon'ble Court that such powers must be exercised lawfully, for objective and not subjective considerations and must always be exercised in a non arbitrary and transparent manner in tune with the requirements of the law, namely the Constitution, the Rules, the Handbook of Procedure and the Conventions.

14. This petition raises issue as to extremely disturbing trend of listing matters subjectively and selectively as clearly discernible from the available data of matters recently filed and listed before only certain Hon'ble Benches. This trend reflects serious erosion of independence of the judiciary, namely, this Hon'ble Court in deciding matters objectively and independently by resorting to the method of favoured listings. As a result, justice appears to be skewed and in many cases justice may even stand denied. But what is more important is that the powers being exercised by the Hon'ble Chief Justice and the concerned Registry officials clearly reflect a pattern of favouritism, nepotism and forum shopping. The powers being exercised in this regard are purely administrative and it is now well settled that administrative exercise of powers is subject to judicial review and if it is found that such exercise is vitiated on account of many extraneous factors like acting under dictation, abuse of discretion, taking into account irrelevant considerations and omitting relevant considerations, mala fides including malice in fact or malice in law, collateral purpose or colourable exercise of power, failure to observe principles of natural justice and take reasoned decisions and violation of doctrine of proportionality, together or separately vitiate the entire decision making process. These principles clearly are attracted in the present case. This Hon'ble Court has consistently taken the view that Constitution has created an independent judiciary which is vested with power of judicial review to determine the legality of administrative actions and that it is the solemn duty of the judiciary under the Constitution to keep different organs of the State within the limits of the powers conferred by the Constitution by exercise of power of judicial review as sentinel on the qui vive. Judicial review aims to protect citizens from abuse or misuse of power by any branch of the State. (Minerva Mills Ltd. v. Union of

India, (1980) 3 SCC 625 @ 677-678). It is equally well settled that in judicial review the Court is not concerned with the merits or the correctness of the decision but with the manner in which the decision is taken or order is made. (S.R. Bommai v. Union of India, (1994) 3 SCC 1). It has therefore been held by this Hon'ble Court that dimensions of judicial review depend upon the facts and circumstances of each case and must therefore remain flexible. Judicial review is thus the touchstone and repository of supreme law of the land and is therefore held to be the basic structure of the Constitution. It has therefore been held consistently by this Hon'ble Court that the cardinal principle of our Constitution is that no one howsoever lofty or mighty or highly placed can claim to be the sole judge of his power under the Constitution and that therefore, Rule of Law requires that the exercise of power by the Legislature, the Executive, the Judiciary or any other authority must be conditioned by the Constitution.

15. Hon'ble Chief Justice was appointed as Chief Justice of India on 28th August 2017. On February 1st, 2018 "Roster of the Work for Fresh Cases" came to be notified by the Registry under the orders of the Hon'ble Chief Justice of India. The Roster was to be effective from February 5th, 2018 till further orders. Under the said roster all "letter petitions and PIL matters" have been arrogated by the Hon'ble Chief Justice to himself along with "criminal matters". "Criminal matters" are also assigned to Court numbers 2, 3, 5, 6, 8, and 10. Similarly "land acquisition and requisition matters" are assigned several Courts including Court numbers 2, 4, and 10. Service matters are also assigned in similar manner to Court numbers 4, 5, 8, and 10. (A copy of the Roster published on the 1st of February 2018 is annexed as **Annexure P 1** Page _____to _____)

16. In the aforesaid backdrop the listing of matters as demonstrated by the examples of the following matters amongst others clearly reflects and establishes gross abuse of powers by the Respondents and reflect negation of the Rule of Law. These matters are:

(i) W.P. (Criminal) 169 of 2017 Campaign for Judicial Accountability and Reforms v UOI & Anr. (Writ Petition seeking SIT investigation into allegations in CBI FIR relating to conspiracy to bribe in order to obtain a favourable judgment in the case of a Medical College that was pending before the Hon'ble Supreme)

On 8.11.2017 after the writ petition was numbered, this case was mentioned for urgent listing before court number 2 (since this is the court where mentionings for urgent listing were being taken up and also because it would not be appropriate for the Chief Justice to deal with this matter in his judicial and administrative capacity in view of the fact that he had dealt with the case of the medical college throughout on the judicial side). On mentioning, J. Chelameswar's bench ordered it to be listed before him on Friday, 10th November. However during lunch the petitioner's counsel was informed by the Registry that in the light of an order by the Chief Justice this case is assigned to another bench and therefore would be coming up on Friday not before Court 2 but before the other bench. On 10.11.2017, the matter was heard by a bench headed by Justice Sikri. The same afternoon the matter was suddenly heard by a Constitution Bench headed by the Hon'ble Chief Justice of India and junior judges hand picked by him. This was then referred to a bench headed by Justice R. K. Agarwarl and the same was dismissed vide Judgement of 1.12.2017, with a cost of 25 lakhs on the

petitioner. A Review petition against the said order was filed on on 4.01.2018 and has not yet been listed.

(ii) Writ Petition (Civil) No. 1088/2017 in the matter of Common Cause v Union of India. (Involving a challenge to the appointment of the Special Director CBI)

This matter was listed on 13.11.2017 when this Hon'ble Court comprising of Hon'ble Mr. Justice Ranjan Gogoi and Hon'ble Mr. Justice Navin Sinha passed the following order: *"List the matter on Friday i.e. 17th November, 2017 before a Bench without Hon'ble Mr. Justice Navin Sinha."* On 17th November 2017 matter was listed before Hon'ble Mr. Justice R. K Agrawal and Hon'ble Mr. Justice Abhay Manohar Sapre in complete contravention of Supreme Court Handbook on Practice and Procedure. On 17.11.2017 Hon'ble Mr. Justice Navin Sinha was not sitting with Hon'ble Mr. Justice Gogoi and accordingly matter ought to have been listed before the Bench presided by Hon'ble Mr. Justice Gogoi. The exercise by the concerned Registry officials in this regard was clearly an abuse of discretion and suffered from malice in law besides being arbitrary.

(A copy of the orders dated 13.11.2017 and 17.11.2017 are annexed as **Annexure P-2**)

(iii) Civil Appeal No.10660/2010 Centre for Public Interest Litigation v Union of India. (The 2G case)

This matter came up before Court Number 2 on 01.11.2017 and was to come up on 06.11.2017 before the said Court. However it

was deleted and upon mentioning ordered for listing before appropriate Bench as per roster. The matter was thereafter listed before Court No. 1 on 13.11.2017 and upon recusal by Hon'ble Mr. Justice A. M Khanwilkar and Hon'ble Mr. D.Y. Chandrachud, the matter was placed before the Bench presided by Hon'ble Mr. Justice Arun Mishra on 17.11.2017, even though other Benches of senior Hon'ble Judges were available.

(iv) Writ Petition (Civil) 20/2018 Bandhuraj Sambhaji Lone Petitioner Versus Union of India with Writ Petition (Civil) 19 of 2018 Tehseen Poonawalla v Union of India (The Judge Loya death investigation case)

This matter upon being mentioned before the Chief Justice on 11.01.2018 was surprisingly ordered to be listed before Court No. 10 on 12.01.2018 and 16.01.2018. Subsequently the matter was mentioned perhaps without notice to the others on 19.01.2018 before the Hon'ble Chief Justice's Bench and it was ordered that the same be listed before "appropriate Bench as per roster." It is submitted that as on date the only published information by the Registry of the Supreme Court was "Supreme court of India list of revised subject category and it does not appear that any other Court Roster was published or if it was at all in existence. PILs were being heard by several courts in this Hon'ble Court. Yet, on 22nd January 2018 the matter was listed before Court No. 1 which heard the matter.

(v) Special Leave to Appeal (Criminal) No 8937 of 2017 Dr. Subramanian Swamy v Delhi Police through Commissioner of Police (Involving the M.P. Shashi Tharoor)

The matter was listed before Court No. 10 on 29.01.2018 and adjourned to satisfy on maintainability. Subsequently on 23.02.2018 the Bench issued notice keeping the question of maintainability open

(vi) Special Leave to Appeal (Criminal) No. 1836 of 2018 Rohini Singh v State of Gujarat

This matter involving Shri. Jay Shah, son of Shri. Amit Shah was also listed before Court No. 1 while several other courts have been authorized to hear criminal matters under the Roster

(vii) Writ Petition (Civil) No. 494 of 2012 (Aadhar case)

The matter was heard initially by a Bench presided by Hon'ble Mr. Justice Chelameswar. Subsequently it was referred to a larger Bench which was constituted on 18.07.2017 by Hon'ble Chief Justice Khehar and which included Hon'ble Mr. Justice Chelameswar and Hon'ble Mr. Justice Bobde amongst others. The question whether privacy is a fundamental right arising out of the same was referred to a Bench of 9 Hon'ble Judge which included the above Hon'ble Judges. However subsequently the Bench came to be reconstituted and does not comprise of Hon'ble Justice Chelameswar, Hon'ble Justice Bobde and Hon'ble Justice Nazeer.

(viii) SLP(C) No. 033869 - / 2017 Energy Watchdog V Union of India (ONGC) Challenge to the appointment of BJP Spokesperson Sambit Patra as Independent Director, ONGC and the appointment of tainted officer Shashi Shankar as CMD, ONGC

Matter listed before Justice R.K. Aggarwal and Justice Manohar Sapre on 04.01.2018 when they adjourned the matter toy 08.01.2018. On 08.01.2018, one of the judges recused. The matter was thereafter listed before Justice A.K. Sikri and Ashok Bhushan in Court 6 on 5.03.20

(ix) SLP(C) 28662-28663/2017 R.P. Luthra v. Union of India & Anr. (The petition which sought an explanation from the Centre for the delay in finalizing the memorandum of procedure (MOP) for appointment of judges to the Supreme Court and High Courts and which also questioned continuing appointments even when the MOP had not been finalised.

On 27.10.2017, the bench of Justices Goel and Lalit heard the matter and scheduled the next hearing for November 14. However, on 8.11.2017, the case was listed before a new Bench of CJI Misra, Justices A.K. Sikri and Amitava Roy. The three judges bench headed by CJI recalled the 27 October order.

(x) The three Judge Bench of the Supreme Court in Pune Municipal Corp. v. Harakchand Misirimal Solanki 2014(3)SCC183 had held that unless the compensation amount is deposited in the concerned Court it would not be treated paid in terms of Section 24(1) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, Act and therefore, non-deposit of such compensation would result in a lapse of acquisition proceeding under Section 24(2) of the Act. The correctness of this law was doubted by a two judge bench of the Supreme Court headed by Justice Arun Mishra vide dated 07.12.2017 in Civil Appeal No. 20982 of 2017, Indore Development Authority v. Shailendra

(Dead) Through LRs, and therefore, the same was referred to the larger bench. In Indore Development Authority, a three judge bench headed by Justice Arun Mishra by a majority of 2:1 vide order dated 08.02.2018 held that the judgment in Pune Municipal Corporation was per incuriam. One of three judges was of the view that a three judge bench cannot hold judgement of another three judge bench per incuriam. Meanwhile, a similar land acquisition matter came up for consideration before another three judge bench headed by Justice Madan B. Lokur on 21.02.2018. This three judge bench, while considering the submission made by the counsels appearing for the farmers, whether a bench of three Learned Judges could have held decision rendered by another bench of three Learned Judges as per incuriam, without referring it to a larger bench and therefore whether this matter should be referred to a larger bench, vide order dated 21.02.2018, made a request to the concerned benches of the Supreme Court dealing with the similar matters to defer the hearing until a decision is rendered one way or the other and listed the matter on 7.03.2018 to hear the State. On 22.02.2018 that is the very next day 2 similar matters were listed before two different two judge benches of the Supreme Court, headed by Justice Arun Mishra and Justice Goel respectively who were part of the judgement holding Pune Municipal per incuriam. Both the two judge benches of the Supreme Court instead of simply adjourning the matter referred their respective cases to the Chief Justice of India to list them before the appropriate bench. The Chief Justice of India without waiting for the hearing before Justice Lokur on 7.03.2018, listed the matters refereed by two other benches on 06.03.2018 before a 5 judge bench presided by himself, when an Order was passed that this bench shall consider all the issues including the correctness of the decision rendered in Pune Municipal

Corporation as well as the judgment rendered in Indore Development Authority.

17. These are some of the instances of clear abuse of power of listing matters and/or re-constituting Benches and assigning matters to such Benches completely contrary to the Rules and the Handbook of Procedure. If these Rules and Procedure prescribed were to apply, such listings and re-allocation of matters could not and ought not to have taken place. The pattern also suggests that certain matters which are politically sensitive and involve either Ruling Party Leaders and/or Opposition Party Leaders are assigned only to certain Hon'ble Benches. Although appearing to be "routine", these listing and/or allocations are clearly designed in a particular direction so as to exclude other Hon'ble Benches from hearing such politically sensitive matters. It is respectfully submitted that these actions and/or omissions are clearly unwarranted and unjustified and reflect a clear design on the part of the Respondents to favour a particular cause or a matter or deflect its course in some manner. It is submitted that there are many other examples where such exercise is going on virtually on a daily basis negating the Rule of Law and Independence of this Hon'ble Court. It is respectfully submitted that such listings and/or allocations are not happening on account of computer allocation but appears due to human interference in the system.

18. That the Petitioner has not filed any other petition seeking the same relief in any other court.

GROUNDS

The Petitioner therefore being aggrieved by the aforesaid is constrained to file the present Petition seeking appropriate reliefs on the followings grounds amongst others:

A. Because it is submitted that the Supreme Court of India constituted under Article 124 (1) of the Constitution of India is also an organ of the State being part of the Judiciary and is therefore subject to the writ jurisdiction of this Hon'ble Court like any other organ of the State.

B. Because by the Rules and the Procedure prescribed under Article 145, allocation of matters is now entirely through computer system and it is only in exceptional cases as provided in the said Rules and Handbook that the Hon'ble Chief Justice can direct specific allocation of a matter to a particular Bench. It is therefore imperative that the Registry Officials who are Respondents herein should act under the Constitution, be solely informed by Rule of Law and must be guided only by the Rules and Handbook of Procedure. It appears that little heed is being paid to the same and matters are allocated by Registry officials to specific benches after perhaps obtaining orders from Hon'ble Chief Justice of India. Such exercise is clearly illegal and impermissible as the Hon'ble Chief Justice has no power or authority to act contrary to statutory rules and procedure.

C. Because the Hon'ble Chief Justice and the other Respondents herein appear to be clearly interfering with listing of matters particularly politically sensitive matters as some of the examples set out hereinabove clearly show. It is submitted that such exercise of powers to list matters before particular Benches and/or deleting them from one Bench and placing them before another or

to ensure that politically sensitive matters are listed only before certain Benches, are clear examples of malice in law since such listings are for collateral purposes and not for judicious purposes. It is submitted that malice in law in exercise of administrative power vitiates the exercise and makes the decisions or orders wholly void ab initio.

D. Because it is absolutely essential to ensure that the public trust in the Institution of Judiciary is not eroded, if not already eroded to somewhat extent by recent events, that the exercise of administrative powers in listing of matters by Hon'ble Chief Justice and concerned Respondents is directed to be done under supervision of an appropriate body of Hon'ble Judges so as to prevent any misuse or abuse. This will not only ensure that justice is done but also ensure that the principle that justice must appear to be done is followed

E. Because the pattern of listing matters, especially those matters involving serious public issues and those relating to powerful politicians from across political parties, are listed selectively and before only certain Hon'ble Benches bypassing Benches presided by Hon'ble Senior Judges of this Court, The above examples are only few in this regard and further inquiry may show even more selective listings in serious matters. Clearly the declared listing mechanism seems to have either failed or have been manipulated to suit certain interests. This has seriously eroded or is capable of eroding the image of this Honble Court in the eyes of general public, which otherwise respects this Institution immensely.

F. Because the Hon'ble Chief Justice of India while exercising administrative powers is clearly subject to judicial review by this Hon'ble Court and is not immune from such judicial review. It is respectfully submitted that the administrative exercise of powers by the Hon'ble Chief Justice must be in consonance with the

Constitutional requirements, must not be arbitrary and cannot be contrary to the Rules, Handbook of Procedure and the Constitution. The Hon'ble Chief Justice, being the highest judicial functionary must exercise his powers fairly, reasonably and in a manner so as to achieve the ultimate goal of administration of justice namely, to dispense justice freely and fairly

G. Because the Hon'ble Chief Justice in exercise of his administrative powers particularly relating to allocation of matters and listing thereof must be guided by the sole consideration of ensuring that justice is not only done but appears to be done. The exercise of powers, if any, as indicated above is such which on the face of it shows that justice does not appear as having been done, suffers from serious vice of impropriety and illegality and needs to be corrected forthwith

H. Because this Hon'ble Court has as early as 1950 in Bharat Bank Ltd. v. Employees (1950) SCR 459 declared the august status of this Hon'ble Court in following words:

> *"In other words, the foundations of this republic have been laid on the bedrock of justice. To safeguard these foundations so that they may not be undermined by injustice occurring anywhere this Court has been constituted."*

Subsequently in Kesavananda Bharati v State of Kerala (1973) 4 SCC 225, it was held that supremacy of the Constitution is amongst the basic features of the Constitution of India. This supremacy of the Constitution is protected by the authority of an independent judicial body to act as the interpreter of a scheme of distribution of powers.

I. Because although the Hon'ble Chief Justice is the Master of the Rolls, his power is confined only to constituting Benches which then in automatic manner through computerized system must be assigned matters by the Registry in a fair and transparent manner. The Rules and the Handbook expressly so provide. There is no scope left for human interference even by the Hon'ble Chief Justice other than to direct particular matters to be assigned to particular Benches. All admission matters must automatically follow the computerized listing and any other method to list them would be unconstitutional and illegal.

J. Because the Hon'ble Chief Justice as Master of the Roll does not possess absolute, unguided and uncanalized powers to list matters as he chooses. It is settled law that everybody is under the law and this Hon'ble Court has consistently approved the principle: "*Be you ever so high, the law is above you"* (See Narendra Madivalapa Kheni vs Manikrao Patil 1977 SCC (4) 153, Pancham Chand And Others vs State Of Himachal Pradesh (2008) 7 SCC 117, and Renu & Ors vs District & Sess.Judge Tishazri (2014) 14 SCC 50)

K. Because our Constitution requires the country and the organs of the State to function within the limits of the Rule of Law and the Hon'ble Chief Justice is as much bound by the canons thereof as anybody else. The Chief Justice of India as administrative head is bound by the Rule of Law, judicial disciple and decorum, in the exercise of such powers. This principle has been enunciated by this Hon'ble Court in many cases as cited below.

The Court held in E. P. Royappa vs State Of Tamil Nadu & Anr, AIR 1974 SC 555,

"85... In other words, Art. 14 is the genus while Art 16 is a species, Art. 16 gives effect to the doctrine of equality in all matters relating to public employment. The basic principle which, therefore, informs both Arts. 14 and 16 is equality and inhibition against discrimination. Now, what is the content and reach of this great equalising principle? It is a founding faith, to use the words of Bose J., "a way of life", and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all-embracing scope and meaning, for to do so Would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Art. 14, and if it affects any matter relating to public employment, it is also violative of Art. 16. Arts. 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valent relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Arts. 14 and 16. Mala fide exercise of Power and arbitrariness are different lethal radiations emanating from the

same vice in fact the matter comprehends the former. Both are inhibited by Arts. 14 and 16."

In *Supreme Court Advocates on Record Association v. UOI* (1993) 4 SCC 441 the Court observed,

3. Mathew, J. in Smt. Indira Nehru Gandhi v. Shri Raj Narain and Anr. (1975) Supp. SCC 1, after indicating that the rule of law is a part of the basic structure of the Constitution, apart of the basic structure of the Constitution, apart from democracy, as held in Kesavananda Bharati (1973) Supp. S.C.R. 1, proceeded to succinctly summarise the modern concept of the rule of law, as under :

...'Rule of law' is an expression to give reality to something which is not readily expressible. That is why Sir Ivor Jennings said that it is an unruly horse.... Dicey's formulation of the rule of law, namely

the absolute supremacy or predominance of regular law, as opposed to the influence of arbitrary power, excluding the existence of arbitrariness, of prerogative, even of wide discretionary authority on the part of the government has been discarded in the later editions of his book. That is because it was realized that it is not necessary that where law ends, tyranny should begin. As Culp Davis said, where the law ends, discretion begins and the exercise of discretion may mean either beneficence or tyranny, either justice or injustice, either reasonableness or arbitrariness.... It is impossible to find a government of laws alone and not of men in the sense of eliminating all discretionary powers. All governments are governments of law and of men....

xxx xxx xxx Another definition of rule of law has been given by Friendrich A. Hayek in his books : "Road to Serfdom" and "Constitution of Liberty". It is much the same as that propounded by the Franks Committee in England : The rule of law stands for the view that decisions should be made by the application of known

principles or laws. In general such decisions will be predictable, and the citizen will known where he is. On the other hand there is what is arbitrary. A decision may be made without principle, without any rules. It is therefore unpredictable, the antithesis of the decision taken in accordance with the rule of law.

xxx xxx xxx If it is contrary to the rule of law that discretionary authority should be given to government departments or public officers, then there is no rule of law in any modern State...it is impossible to enunciate the rule of law which has as its basis that no decision can be made unless there is a certain rule to govern the decision.

"14. It is, therefore, realistic that there has to be room for discretionary authority within the operation of the rule of law, even though it has to be reduced to the minimum extent necessary for proper govenance; and within the area of discretionary authority, the existence of proper guidelines or norms of general application excludes any arbitrary exercise of discretionary authority..."

In *Delhi Transport Corpn. v. D.T.C. Mazdoor Congress*, 1991 Supp (1) SCC 600. the Court held,

230. There is need to minimise the scope of the arbitrary use of power in all walks of life. It is inadvisable to depend on the good sense of the individuals, however high-placed they may be. It is all the more improper and undesirable to expose the precious rights like the rights of life, liberty and property to the vagaries of the individual whims and fancies. It is trite to say that individuals are not and do not become wise because they occupy high seats of power, and good sense, circumspection and fairness does not go with the posts, however high they may be. There is only a complacent presumption that those who occupy high posts have a high sense of responsibility. The presumption is neither legal nor rational. History does not support it and reality does not warrant it.

In particular, in a society pledged to uphold the rule of law, it would be both unwise and impolitic to leave any aspect of its life to be governed by discretion when it can conveniently and easily be covered by the rule of law.

236. The "high authority" theory so-called has already been adverted to earlier. Beyond the self-deluding and self-asserting righteous presumption, there is nothing to support it. This theory undoubtedly weighed with some authorities for some time in the past. But its unrealistic pretensions were soon noticed and it was buried without even so much as an ode to it. Even while Shah, J. in his dissenting opinion in Moti Ram Deka v. General Manager, N.E.F. Railways3 had given vent to it Das Gupta, J. in his concurring judgment but dealing with the same point of unguided provisions of Rule 148(3) of the Railway Establishment Code, had not supported that view and had struck down the rule as being violative of Article 14 of the Constitution. The majority did not deal with this point at all and struck down the rule as being void on account of the discrimination it introduced between railway servants and other government servants.

L. Because it is absolutely essential to ensure that the public trust in the Institution of Judiciary is not eroded, if not already eroded to somewhat extent by recent events, that the exercise of administrative powers in listing of matters by Hon'ble Chief Justice and concerned Respondents is directed to be done under supervision of an appropriate body of Hon'ble Judges so as to prevent any misuse or abuse. This will not only ensure that justice is done but also ensure that the principle that justice must appear to be done is followed

M. Because this Hon'ble Court on numerous occasions has held that the administrative power of Hon'ble Chief Justice in certain matters ought not be exercised by the Hon'ble Chief Justice alone but must be exercised collectively with the help of other Judges.

N. Because this Hon'ble Court in S.P. Gupta v Union of India (1981) Supp SCC 87 approvingly quoted eloquent words of Justice Krishna Iyer to the following effect, "*Independence of the judiciary is not genuflexion; nor is it opposition to every proposition of Government. It is neither judiciary made to opposition measure nor Government's pleasure*". Hon'ble Mr. Justice P N Bhagwati following the said observation observed: "*Judges should be of stern stuff and tough fibre, unbending before power, economic or political, and they must uphold the core principles of the Rule of Law which says "Be you ever so high, the law is above you." This is the principle of Independence of the Judiciary which is vital for the establishment of real participatory democracy, maintenance of the Rule of Law as a dynamic concept and delivery of social justice to the vulnerable sections of the community."*

O. Because this Hon'ble Court speaking through Justice Bhagwati while interpreting Article 124 (2) held,

"31...The result is that the Chief Justice of India alone is consulted in the matter of appointment of a Supreme Court Judge and largely as a result of a healthy practice followed through the years, the recommendation of the Chief Justice of India is ordinarily accepted by the Central Government, the consequence being that in a highly important matter like the appointment of a Supreme Court Judge, it is the decision of the Chief Justice of India which is ordinarily, for all

practical purposes final. But, as it happens, there are no criteria laid down or evolved to guide the Chief Justice in this respect nor is there any consultation with wider interests. This is, to our mind, not a very satisfactory mode of appointment, because wisdom and experience demand that no power should be vested in a single individual howsoever high and great he may be and howsoever honest and well meaning. We are all human beings with our own likes and dislikes, our own predilections and prejudices and our mind is not so comprehensive as to be able to take in all aspects of a question at one time and moreover sometimes, the information on which we base our judgments may be incorrect or inadequate and our judgment may also sometimes be imperceptibly influenced by extraneous or irrelevant considerations, It may also be noticed that it is not difficult to find reasons to justify what our bias or predilection or inclination impels us to do. It is for this reason that we think it is unwise to entrust power in any significant or sensitive area to a single individual, howsoever high or important may be the office which he is occupying. There must be, checks and controls in the exercise of every power, particularly when it is a power to make important and crucial appointments and it must be exercisable by plurality of hands rather than be vested in a single individual. That is perhaps the reason why the Constitution makers introduced the requirement in Clause (2) of Article 124 that one or more Judges out of the Judges of the Supreme Court and of the High Courts should be consulted in making appointment of a Supreme Court Judge. But even with this provision, we do not think that the safeguard is adequate because it is left to the Central Government to select any one or more of the Judges of the Supreme Court and of the High Courts for the purpose of consultation. We would rather suggest that there must be a collegium to make recommendation to the President in regard to appointment of a Supreme Court or High Court Judge, The recommending authority should be more broad based and there should be consultation with wider interests. If the collegium is composed of

persons who are expected to have knowledge of the persons who may be fit for appointment on the Bench and of qualities required for appointment and this last requirement is absolutely essential -- it would go a long way towards securing the right kind of Judges, who would be truly independent in the sense we have indicated above and who would Invest the judicial process with significance and meaning, for the deprived and exploited sections of humanity".

P. Because subsequently in *Supreme Court Advocates on Record Association v. UOI* (1993) 4 SCC 441, this Hon'ble Court while laying down the foundation of the collegium system in appointment of judges held,

14. It is, therefore, realistic that there has to be room for discretionary authority within the operation of the rule of law, even though it has to be reduced to the minimum extent necessary for proper governance; and within the area of discretionary authority, the existence of proper guidelines or norms of general application excludes any arbitrary exercise of discretionary authority. In such a situation, the exercise of discretionary authority in its application to individuals, according to proper guidelines or norms, further reduces the area of discretion; but to that extent discretionary authority has to be given to make the system workable. A further check in that limited sphere is provided by the conferment of the discretionary authority not to one individual but to a body of men, requiring the final decision to be taken after full interaction and effective consultation between them, to ensure projection of all likely points of view and procuring the element of plurality in the final decision with the benefit of the collective wisdom of all those involved in the process. The conferment of this discretionary authority in the highest functionaries is a further check in the same direction. The constitutional scheme excludes the scope of absolute power in any one individual. Such a construction of the provisions also, therefore, matches the constitutional scheme and the constitutional purpose for which these provisions were enacted."

"40. It is obvious, that the provision for consultation with the Chief Justice of India and, in the case of the High Courts, with the Chief Justice of the High Court, was introduced because of the realisation that the Chief Justice is best epuipped to know and assess the worth of the candidate, and his suitability for appointment as a superior judge; and it was also necessary to eliminate political

influence even at the stage of the initial appointment of a judge, since the provisions for securing his independence after appointment were alone not sufficient for an independent judiciary. At the same time, the phraseology used indicated that giving absolute discretion or the power of veto to the Chief Justice of India as an individual in the matter of appointments was not considered desirable, so that there should remain some power with the executive to be exercised as a check, whenever necessary. The indication is, that in the choice of a candidate suitable for appointment, the opinion of the Chief Justice of India should have the greatest weight; the selection should be made as a result of a participatory consultative process in which the executive should have power to act as a mere check on the exercise of power by the Chief Justice of India, to achieve the constitutional purpose. Thus, the executive element in the appointment process is reduced to the minimum and any political influence is eliminated. It was for this reason that the word 'consultation' instead of 'concurrence' was used, but that was done merely to indicate that absolute discretion was not given to any one, not even to the Chief Justice of India as individual, much less to the executive, which earlier had absolute discretion under the Government of India Act."

"56. It has to be borne in mind that the principle of non-arbitrariness which is an essential attribute of the rule of law is all pervasive throughout the Constitution; and an adjunct of this principle of the absence of absolute power in one individual in any sphere of constitutional activity. The possibility of intrusion of arbitrariness has to be kept in view, and eschewed, in constitutional interpretation and, therefore, the meaning of the opinion of the Chief Justice of India, in the context of primacy, must be ascertained. A homogenous mixture, which accords with the constitutional purpose and its ethos, indicates that it is the opinion of the judiciary 'symbolised by the view of the Chief Justice of India' which is given greater significance or primacy in the matter of appointments. In other words, the view of the Chief Justice of India is to be expressed in the consultative process as truly reflective of the opinion of the judiciary, which means that it must necessary have the element of plurality in its formation. In actual practice, this is how the Chief Justice of India does, and is expected to function, so that the final opinion expressed by him is not merely his individual opinion, but the collective opinion formed after taking into account the view of some other Judges who are traditionally associated with this function."

"58. The rule of law envisages the area of discretion to be the minimum requiring only the application of known principles or guidelines to ensure non-arbitrariness, but to that limited extent, discretion is a pragmatic need. Conferring discretion upon high functionaries and, whenever feasible, introducing the element of

plurality by requiring collective decision, are further checks against arbitrariness. This is how idealism and pragmatism are reconciled and integrated, to make the system workable in a satisfactory manner. Entrustment of the task of appointment of superior Judges to high constitutional functionaries; the greatest significance attached to the view of the Chief Justice of India, who is best equipped to assess the true worth of the candidates for adjudging their suitability; the opinion of the Chief Justice of India being the collective opinion formed after taking into account the views of some of his colleagues; and the executive being permitted to prevent and appointment considered to be unsuitable, for strong reasons disclosed to the Chief Justice of India, provide the best method, in the constitutional scheme, to achieve the constitutional purpose without conferring absolute discretion or veto upon either the judiciary or the executive, much less in any individual, be he the Chief Justice of India or the Prime Minister."

"74. The primacy of the judiciary in the matter of appointments and its determinative nature in transfers introduces the judicial element in the process, and is itself a sufficient justification for the absence of the need for further judiciary review of those decision, which is ordinarily needed as a check against possible executive excess or arbitrariness. 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, even subconsciously, of any individual. The judicial element being predominant in the case of appointments, and decisive in transfers, as indicated, the need for further judicial review, as in other executive actions, is eliminated. The reduction of the area of discretion to the minimum, the element of plurality of Judges in formation of the opinion of the Chief Justice of India, effective consultation in writing, and prevailing norms to regulate the area of discretion are sufficient checks against arbitrariness."

Further the majority speaking through Hon'ble Mr. Justice J. S. Verma held inter-alia as under,

"*427. It is, therefore, realistic that there has to be room for discretionary authority within the operation of the rule of law, even though it has to be reduced to the minimum extent necessary for proper governance; and within the area of discretionary authority, the existence of proper guidelines or norms of general application excludes any arbitrary exercise of discretionary authority. In such a situation, the exercise of*

discretionary authority in its application to individuals, according to proper guidelines or norms, further reduces the area of discretion; but to that extent discretionary authority has to be given to make the system workable. A further check in that limited sphere is provided by the conferment of the discretionary authority not to one individual but to a body of men, requiring the final decision to be taken after full interaction and effective consultation between themselves, to ensure projection of all likely points of view and procuring the element of plurality in the final decision with the benefit of the collective wisdom of all those involved in the process. The conferment of this discretionary authority in the highest functionaries is a further check in the same direction. The constitutional scheme excludes the scope of absolute power in any one individual. Such a construction of the provisions also, therefore, matches the constitutional scheme and the constitutional purpose for which these provisions were enacted."

Q. Because in its judgment in 1993 this Hon'ble Court defined "what is the meaning of the opinion of Judiciary by the view of the Chief Justice of India" in following words,

"478. This opinion has to be formed in a pragmatic manner and past practice based on convention is a safe guide. In matters relating to appointments in the Supreme Court, the opinion given by the Chief Justice of India in the consultative process has to be formed taking into account the views of the two seniormost Judges of the Supreme Court. The Chief Justice of India is also expected to ascertain the views of the senior-most Judge of the Supreme Court whose opinion is likely to be significant in adjudging the suitability of the candidate, by reason of the fact

that he has come from the same High Court, or otherwise. Article 124(2) is an indication that ascertainment of the views of some other Judges of the Supreme Court is requisite. The object underlying Article 124(2) is achieved in this manner as the Chief Justice of India consults them for the formation of his opinion. This provision in Article 124(2) is the basis for the existing convention which requires the Chief Justice of India to consult some Judges of the Supreme Court before making his recommendation. This ensures that the opinion of the Chief Justice of India is not merely his individual opinion, but an opinion formed collectively by a body of men at the apex level in the judiciary."

R. Because in *SPECIAL REFERENCE NO. 1 OF 1998, RE* (1998) 7 SCC 739, the Court further clarified,

> *The Chief Justice of India must make a recommendation to appoint a Judge of the Supreme Court and to transfer a Chief Justice or puisne Judge of a High Court in consultation with the four senior most puisne Judges of the Supreme Court. Insofar as an appointment to the High Court is concerned, the recommendation must be made in consultation with the two senior most puisne Judges of the Supreme Court.*
> *4. The Chief Justice of India is not entitled to act solely in his individual capacity, without consultation with other Judges of the Supreme Court, in respect of materials and information conveyed by the Government of India for non-appointment of a judge recommended for appointment.*

S. Because it is now settled law that even administrative powers of the Hon'ble Chief Justice must be shared with other Hon'ble Senior Judges to ensure that the power is exercised properly and validly. Therefore it is imperative that the power of listing expressly provided under the Rules and the Handbook of Procedure to be

exercised in a particular manner must be supervised by the Hon'ble Chief Justice along with such number of seniormost Hon'ble Judges as this Hon'ble Court may deem fit. This Hon'ble Court has widened the Collegium to four senior Judges along with the Chief Justice for considering appointments to the Hon'ble Supreme Court or two Hon'ble seniormost Judges along with Chief Justice for considering appointment to the High Courts. It is submitted that therefore a settled yardstick is available in this regard which is required to be applied for exercise of powers if any for listing under the Rules and the Procedure by the Hon'ble Chief Justic and the concerned Respondents so that such power is not exercised in an uncanalised and unguided manner.

T. Because international best practises in case allocation are required to be adopted by this Hon'ble Court and every High Court in the country. They provide as follows:

1. UK Supreme Court: Their case assignment process is one of structured and institutional discretion. It works in the following manner:

a. The Court Registrar draws up often-randomized panels, although ultimate authority is with the President and Deputy President of the Court.

b. The President or Deputy President of the Supreme Court, or both together, adopt a consultative, flexible and open procedure to case allocation and listing; they consult with and are receptive to input and feedback from the other justices of the Court.

c. The UK Supreme Court's case assignment is therefore based on convention which is strongly adhered to.

2. High Court of Australia: They sit as a full bench in significant cases. Otherwise, when cases are to be assigned to benches, the practice is as detailed by Hon. Justice Michael Kirby in his lecture on Judicial Accountability in Australia (2001), published in the learned journal 'Legal Ethics': In the High Court of Australia, for example, the Chief Justice "proposes" a roster of the Court for each sittings. In the Court of Appeal of New South Wales, this is done by the President, who also assigns primary responsibility for preparing a first draft of the Court's reasons in particular cases. In the High Court, because each Justice traces his or her commission to the Constitution, the Chief Justice's power of assignment is recommendatory, not determinative. In the 1930s, Justice Starke made this point by regularly pulling up his chair and sitting in cases in which he decided to participate, although his name was not included in the roster "proposal". According to contemporary records, Justice Starke gave Chief Justice Latham a very hard time."

3. Supreme Court of Canada: The Chief Justice's discretion is circumscribed by conventions that are strictly adhered to in practice. In his book 'Governing From the Bench: The Supreme Court of Canada and the Judicial Role (2013)', Professor Emmett Macfarlane quoted former Chief Justice Lamer who while explaining the limits to his discretionary authority, explained that for final hearings where it is possible that the outcome of the case might depend on how a panel is constituted, a panel of all nine Justices will be struck. "[i]f there is a possibility that the outcome of a case might be different with fewer than nine judges, I'll do my best to strike a panel of nine judges. How do I know if there will be a division? First, my executive legal officer helps me to flag these cases. Also, I know my colleagues and I have a fairly good idea about what they are thinking on particular issues. I might ask what the other judges think about a particular issue, even

if it is not of national general importance. I wouldn't like to see a minority in the court impose its views on the court, and even for the cases that are not of general importance I will strike the bench of nine if necessary."

Professor Macfarlane notes, "An opportunistic Chief Justice could conceivably use his or her power to strike panels in an ideological manner," but that the long-term trend is towards striking larger panels of all nine Justices, with over half of all cases (51.8%) decided by panels of the full court under former Chief Justice Maclachlin. Professor Macfarlane states that this long-term trend indicates, "Strengthening norms override such [opportunistic] considerations." Professor Macfarlane gives an overview of how the process works: "The composition of the panels is relatively fluid, although applications from Quebec are normally sent to justices from Quebec, given their familiarity with the Civil Code of Quebec. Further, those raising special issues are sometimes forwarded to a justice with expertise in a particular area. The list of cases granted is discussed at a conference of the full Court, giving the Court as a whole some control over the number and kind of cases that are heard from the set of applications granted at any one time. Any justice may also bring any case rejected by a panel up for discussion."

6. United States Courts of Appeal: As per In Case Management Procedures in the Federal Courts of Appeals (2nd ed, 2011) *"Most case assignments are random, and case assignment is separate from panel selection to maintain the integrity of the process. For example, in capital appeals, the clerk in the Tenth Circuit creates a list of randomly selected active judges for assignment to cases.*

7. That the European Court of Human Rights, European Court of Justice and the German Federal Court also follow specific rules. These are:

(a) The European Court of Human Rights ("the Strasbourg Court") has a set of 'Rules of the Court' that clearly detail how cases are to be allocated. There is very little discretion or scope for arbitrary action by anyone. The Court's Rules tend to provide for the senior most judges to be included by right in major cases, with the rest of the judges being selected either by lot (for the most important cases before the Grand Chamber, per Rule 24(1)) or rotation (for Chambers of Seven Judges, per Rule 26(1)). This rule-based procedure shows two things: first, seniority is accepted as bestowing certain rights; second, the rules are neutral because they create a clear, accountable and rational method for spreading work, and so minimize the scope for arbitrariness. The use of explicit rules to encourage transparency and accountability is because the European Court of Human Rights frequently hears politically charged cases of great importance and has jurisdiction over a vast and disparate area – similarly to the Supreme Court of India.

(b) That the European Court of Justice (ECJ) ("the Luxembourg Court") has a detailed set of Rules of the Court that set out how Chambers (i.e. benches) are to be composed. Benches are chosen in a way that respects principles of seniority - the President and Vice President of the Court, and Chambers' President are automatically included as appropriate. Additional judges are chosen from clear and publically available lists drawn up through prescribed principles: either according to simple seniority, or the 'seniority alternating in reverse order' principle (by which the first on the list is the senior-most, the

second on the list is the junior-most, etc). Either way, case allotment is clearly rule-based with limited scope for discretion, and no unbridled discretion.

(c) There are two aspects to case allocation in the Bundesverfassungsgericht, German Federal Constitutional Court (FCC). First, deciding which of the two 'Senates' a case should go to; second, deciding which Justices should hear the case from within the Senate it has gone to. Both of these issues are determined on the basis of clear principles set out in the Federal Constitutional Court Act, and the Rules of Procedure of the FCC. The former determination is made as per Article 14(5) of the FCC Act, by a committee known as the 'Gang of Six', which consists of the President, Vice-President and four Justices, of whom each Senate shall appoint two for the duration of the judicial year. The latter determination is made on the basis of clear principles that each Senate decides on and adopts for itself per § 20 of the Rules:

(1). "Before the start of a judicial year, each Senate shall decide, with effect from the start of that judicial year, on the principles on how cases are assigned to the Justices, including the presiding Justices, as reporting Justices. Deviations from these principles shall be permissible during the judicial year only if they become necessary due to excessive workloads or Justices being unable to perform their functions for an extended period."
(2). "The presiding Justice shall determine the reporting Justice for a given case. In doubt, the relevant members of the Senate will be given the opportunity to submit statements. In general, disagreements are resolved by the Senate. If a matter is

particularly important, the presiding Justice may, with the Senate's consent, appoint a coreporting Justice."

The website of the FCC further clarifies*: "Before the beginning of each judicial year, which is the calendar year, each Senate decides on the allocation of the proceedings to the Justices as reporting Justices. During the judicial year, these fundamental decisions can only be deviated from if a Justice's work overload or a Justice's inability to exercise his or her duties for a prolonged period of time makes such a shift necessary. Generally, the reporting Justice is obliged to draft a written "Votum", or "bench memorandum" for the individual proceedings. Moreover, before the beginning and for the duration of the judicial year, each Senate appoints several three-member Chambers and decides which Justices are to be substitute members. Within their competences, the Chambers decide on the proceedings that are assigned to one of their members as the reporting Justice."* In other words: each Senate decides certain principles on how cases will be assigned. As part of this they appoint several three member Chambers (with substitute members) and give each Chamber responsibility for specific competences. Cases then go to the Chamber with appropriate competence. Within their competences, the Presiding Justice of a Chambers decides on which Justice shall be assigned as 'Reporting Justice' for which proceeding. But this process is flexible and collegiate because Justices are able to submit written statements about why they should be 'Reporting Justice,' and the Senate ultimately resolves any disagreements about who should be 'Reporting Justice'"

U. Because as against the above established practice in well known democracies the International Bar Association in its Report striving for Judicial independence found that in Russia the system

of "Court Chairpersons control the allocation of cases within the Court" to be highly subjective and the Report concluded that *"the allocation of cases in individual courts by Chairpersons must be done according to objective criteria. Consideration should be given to developing such criteria in the light of the rules relating to judicial independence which are binding on Russia. Cases should not be transferred from individual judges except in accordance with clearly established procedures and for reasons established by law such as conflict of interest, ill health, etc."*

V. Because it is respectfully submitted that India is the largest democracy in the World and the Independence of Judiciary ensures that democratic principles remain intact. Our judiciary is highly respected within and outside the country not only for its independence but also for the jurisprudence given by it over seven decades. It is therefore necessary that this great image is not undermined in any manner and is therefore this present matter needs to be resolved at the earliest by placing appropriate guidelines on exercise of listing powers by the Respondents in the larger interests of the Institution.

W. Because the pattern of listing matters, especially those matters involving serious public issues and those relating to powerful politicians from across political parties, are listed selectively and before only certain Hon'ble Benches bypassing Benches presided by Hon'ble Senior Judges of this Court, The above examples are only few in this regard and further inquiry may show even more selective listings in serious matters. Clearly the declared listing mechanism seems to have either failed or have been manipulated to suit certain interests. This has seriously eroded or is capable of

eroding the image of this Honble Court in the eyes of general public, which otherwise respects this Institution immensely.

X. The salutary principle, “Justice must not only be done but must appear to be done", must apply to the Institution of the Supreme Court too. The manner of listing matters, and that too sensitive matters of general public importance, before select Benches seriously negates this principle and portrays this Honble Court in poor light in the eyes of billion plus Nation and especially millions of litigants. Those who seek justice from this great Institution will be seriously concerned about their own cases. The image and reputation of this Honble Court is greatly affected by such selective exercise of administrative powers of constituting Benches and listing matters to suit certain causes and interests

PRAYERS

That the Petitioner therefore prays:

a) That this Hon’ble Court may be pleased to issue a writ of declaration or a writ in the nature of declaration or any other appropriate writ, order or direction holding and declaring that listing of matters must strictly adhere to the Supreme Court Rules, 2013 and Handbook on Practice and Procedure and Office Procedure, subject to the following clarification:

i) The words ‘Chief Justice of India’ must be deemed to mean a collegium of 5 senior judges of this Hon’ble Court.

b) That this Hon’ble Court may be pleased to issue a writ of declaration or a writ in the nature of declaration or any other appropriate writ, order or direction holding and declaring that the consultation by the Registry Officials for listing purposes, if any with the Hon’ble Chief Justice of India must include consultation

with such number of senior-most judges as this Hon'ble Court may fix in the interest of justice.

c) That this Hon'ble Court may be pleased to issue a writ of prohibition or a writ in the nature of prohibition or any other appropriate writ, order or direction prohibiting the Hon'ble Chief Justice of India and concerned respondents from listing any matter contrary to the Supreme Court Rules, 2013 and Handbook on Practice and Procedure and Office Procedure or picking and choosing Benches for the purpose of listing contrary thereto, with the above modification of replacing 'Chief Justice of India' with the collegium of 5 senior most judges of this Hon'ble Court.

d) That this Hon'ble Court may Clarify that when matters are mentioned for urgent hearing/listing, only a date/time of hearing would be fixed but the bench to hear the matter would be determined in accordance with the Rules.

(e) That this Hon'ble Court may be pleased to grant such other and further relief as may be deemed fit in the facts and circumstances of the case and as may be required in the interests of justice

Drawn and Filed by:

PRASHANT BHUSHAN

ADVOCATE ON RECORD

Filed on: 2nd April 2018.