REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO.789 OF 2018
(ARISING OUT OF DIARY NO. 12405 OF 2018)

SHANTI BHUSHAN .....PETITIONER(S)

VERSUS

SUPREME COURT OF INDIA
THROUGH ITS REGISTRAR AND ANOTHER .....RESPONDENT(S)

J U D G M E N T

A.K.SIKRI, J.

The name of respondent No.2 is deleted from the array of parties, inasmuch as, having regard to the nature of submissions made during hearing, which would be taken note of at the appropriate place, respondent No.2 is not a necessary party.

2. The petitioner herein, who is a senior advocate practicing in this Court and enjoys credible reputation in the profession as well as in public, has filed this writ petition under Article 32 of the Constitution of India. In this writ petition, he seeks this Court to clarify the administrative authority of the Chief Justice of India (for

short, the 'Chief Justice') as the Master of Roster and for laying down the procedure and principles to be followed in preparing the Roster for allocation of cases.

3. It may be mentioned at the outset that the petition acknowledges and accepts the legal principles that the Chief Justice is the "*Master of Roster*" and has the authority to allocate the cases to different Benches/Judges of the Supreme Court. It is also conceded that adherence to this principle, namely, the Chief Justice is the Master of Roster, is essentially to maintain judicial discipline and decorum. It is also stated that the Chief Justice is first among equals, meaning thereby all Judges of the Supreme Court are equal with same judicial power, with Chief Justice as the senior most Judge. At the same time, it is contended that this power is not to be used to assert any superior authority by the Chief Justice and the power is to be exercised in a manner that is fair, just and transparent. As the Master of Roster, it is also conceded that it is the Chief Justice who has to decide as to which Bench will hear a particular case. The apprehension expressed is that keeping in view the predisposition of particular Judges, the Chief Justice may assign cases to those Judges to achieve a predetermined outcome. This calls for, according to

the petitioner, devising a more rational and transparent system of listing and re-allocation of the matters to avoid any such possibilities. As per the petitioner, the matters need to be listed by strictly following the provisions of the Supreme Court Rules, 2013 (hereinafter referred to as the 'Rules'). These Rules, no doubt, empower the Chief Justice to allocate certain cases by exercising his discretionary power. The petitioner submits that in order to ensure that such a discretion is exercised in a fair manner, the expression *'Chief Justice'* should be interpreted to mean *'Collegium'* of first five Judges of the Supreme Court, as held by this Court in ***Supreme Court Advocates-On-Record Association and Others*** v. ***Union of India***[1] (famously known as the "*Second Judges' case"*). On the aforesaid edifice, the petitioner has prayed for the following directions:

> "(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.
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> (b) That this Hon'ble court may be pleased to issue a writ of declaration of a writ in the nature of declaration or any other appropriate writ, order or direction holding and declaring that the consultation by the Registry

1 (1993) 4 SCC 441

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."

4. Mr. Dushyant Dave, learned senior counsel appearing for the petitioner, submitted that in certain cases, instances whereof are given in the writ petition, the manner in which matters are allocated to certain Benches reflect that either there was no strict adherence to the Rules or the transparency was lacking. He, however, at the outset, made it clear that the petitioner does not seek to question the validity of any judicial orders and/or judgments which have been rendered in those cases or in other

cases. The petition is confined to the scope and ambit of the powers of the Chief Justice in listing matters and to seek declaration that the power must be exercised lawfully and on objective consideration, thereby eschewing any subjective considerations. The entire thrust of his submissions was, therefore, to suggest the ways and means for achieving the same. In this behalf, he advanced the following propositions:

(a) Constitution of India expressly confers powers on the Supreme Court under Article 145 to make Rules *"for regulating generally the practice and procedure of the court"* with the approval of the President. Such Rules may include, 'rules as to the procedure for hearing appeals and other matters pertaining to appeals including the time within which appeals to the Courts are to be entered'. Sub-Articles (2) and (3) thereunder fix minimum number of judges to sit for any purpose including for deciding a case involving substantial question of law as to the interpretation of the Constitution or a Reference under Article 143.

Article 124 establishes and constitutes the Supreme Court by providing, *'there shall be a Supreme Court of India consisting of a Chief Justice and, until Parliament by law prescribes a larger number of not more than seven other Judges (original)'*.

Thus, the expression *'Supreme Court'* includes the Chief Justice and other Judges of the Court. The power to frame Rules under Article 145 is, therefore, conferred upon the entire Court, which power includes power to frame the Roster and direct hearing/ listing of matters.

(b) Thus, although the Chief Justice is the Master of the Roll under the convention, the Constitution has departed from the conventional Scheme to confer power upon the supreme Court.

(c) The expression *'Chief Justice'* has been interpreted by a Constitution Bench of this Court in ***S.P. Gupta*** v. ***Union of India and Another***[2] (known as the *"First Judges' case"*) to mean a *'Collegium'.* This was done to ensure a guard against the absolute power being conferred upon the Chief Justice alone. It was observed in the said judgment as follows:

> "31...We are all human beings with our own likes and dislikes, our own predelictions 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 predeliction 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

2 (1981) Supp. SCC 87

> 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..."

This principle has been subsequently followed by this Court in the ***Second*** and ***Third Judges'*** case.

The interpretation so canvassed by this Court must equally apply in respect of the power, if any, exclusively claimed by the Chief Justice as the Master of the Roster. It is well settled that in a statute a particular expression must receive the same and consistent meaning.

(d) Functions as *'framing of Roster'* and *'listing of important and sensitive matters'* are extremely crucial and cannot be left to the sole discretion of the Chief Justice as per the law laid down in the ***First Judges'*** case. In any case, such exclusive discretion is anathema to the constitutional scheme. It is, therefore, imperative that the expression *'Chief Justice'* must mean the Supreme Court or, as held by this Court in series of judgments, the *'Collegium'* of five senior most judges, to provide appropriate checks and balances against any possible abuse.

(e) The Rules framed under Article 145 of the Constitution confer powers on the Registrar under Order III Rules 7 and 8 to

deal with preparation of lists and fixing of hearings of petitions, which would include appropriate listings. The matters be listed strictly as per these Rules.

5. To put it pithily, the submission is that once the Rules are framed, matters should be listed and fixed for hearing as per the provisions, particularly Order III Rules 7 and 8, thereof. Further, in any case, the expression *'Chief Justice'* has to assign the meaning by reading it as a *'Collegium'* so that important and sensitive matters are assigned to particular Benches by the Collegium of five senior most Judges, including the Chief Justice.

6. Mr. Dave elaborated the aforesaid submissions by arguing that fairness in action was the hallmark of any administrative power and while exercising the power as a Master of Roster in allocating a Bench to hear particular kind of cases, the Chief Justice performs his function in an administrative capacity. He also submitted that applicability of the principle of bias is to be judged by applying the test of reasonable apprehension of bias in the mind of a party, as held in the case of ***Ranjit Thakur*** v. ***Union of India and Others***[3]. It was emphasised that the Constitution of India has created an independent judiciary which is vested with

3 (1987) 4 SCC 611

the power of judicial review to determine the legality of administrative actions and, thus, it becomes the solemn duty of the judiciary to keep the organs of the State within the limits of the power conferred by the Constitution by exercising the power of judicial review which is the sentinel on the *qui vive*. When such an important task is assigned to the judiciary, power of listing the cases has to be exercised in a fair and transparent manner so as to instill confidence in the public at large that the matter shall be decided by the Court (or for that matter, by a particular Bench) strictly on legal principles to ensure that Rule of Law, which is a part of the basic structure of the Constitution, prevails. In this context, it was argued that the power to allocate the cases should not be with one individual and this could be taken care of by applying the principle laid down in the ***Second Judges'*** case wherein, while laying down the foundation of the *Collegium* system for the appointment of Judges, it was held:

> "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.

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450. 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 equipped 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 anyone, not even to the Chief Justice of India as an individual,

much less to the executive, which earlier had absolute discretion under the Government of India Acts.

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466. 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 is 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 necessarily 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 views of some other Judges who are traditionally associated with this function.

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468. 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 a 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 an 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.

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480. 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 judicial review of those decisions, 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."

7. Mr. Dave also referred to the following observations of Justice J.S. Verma (as His Lordship then was) in that very judgment:

"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..."

8. Learned senior counsel also relied upon paragraph 44 of the judgment in ***Special Reference No. 1 of 1998***[4] (popularly known as the *"Third Judges' case"*) wherein the Court answered the questions under Reference by clarifying as follows:

> "44. The questions posted by the Reference are now answered, but we should emphasise that the answers should be read in conjunction with the body of this opinion:
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> 3. 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 seniormost 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 seniormost puisne Judges of the Supreme Court.
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> 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."

4 (1998) 7 SCC 739

9. Towing the aforesaid line, Mr. Dave proceeded to argue that the modern trend in all robust legal systems governed by democratic principles was to ensure that even administrative powers of the Chief Justice must be shared with other senior Judges so that the power is exercised properly and validly. In support, the learned senior counsel referred to the system that prevails in the United Kingdom Supreme Court, High Court of Australia (which is the apex court of that country), Supreme Court of Canada, German Federal Court and even European Court of Human Rights and European Court of Justice.

10. Mr. Venugopal, learned Attorney General, in reply to the aforesaid arguments of the petitioner, submitted that the petitioner has virtually accepted the legal position to the effect that the Chief Justice is the '*Master of Roster*' and in that capacity he also has the authority to allocate the cases to different Benches/Judges of the Supreme Court. Therefore, the grievance, essentially, of the petitioner was about the manner in which such a power is being exercised. However, at the same time, the petitioner had also made it clear that he was not questioning particular decisions rendered by particular Benches which were assigned some of the

important matters, pointed out the learned Attorney General. He submitted that the substance of the argument of the learned senior counsel for the petitioner was that in order to ensure that the cases are assigned in a fair and transparent manner, the term '*Chief Justice*' should be interpreted to mean '*Collegium*' of five senior most judges including the '*Chief Justice'*. Response of the learned Attorney General was that though such a mechanism, as a solution, was found out by this Court in the judgments popularly known as ***Three Judges'*** case(s) for appointment of Judges in the High Court as well as in the Supreme Court, suggestion was totally impractical when it comes to discharge of administrative duties by the '*Chief Justice*' in his capacity as the Master of Roster. Strongly refuting this suggestion, he argued that such an interpretation was not only impractical, it would even result in a chaos if day to day administrative work, including the task of constituting the Benches and allocating cases to the Benches, is allowed to be undertaken by the '*Collegium'*. His submission was that such matters of constituting the Benches and allocating cases to the respective Benches has to be left to the sole discretion of the '*Chief Justice*' acting in his individual capacity, for the smooth functioning of the Court, by reposing faith and trust in

the '*Chief Justice*' who occupies the highest constitutional position in the judiciary.

11. We have bestowed serious consideration to the submissions made by the counsel on either sides. It may also be clarified at the outset that this matter has not been treated as adversarial in nature. This Court would also like to place on record that it does not dispute the bona fides of the person like the petitioner, who enjoys considerable respectability, in filing this petition. This Court has considered the entire matter objectively and with great sense of responsibility. At the same time, it also becomes our duty to decide the matter in accord with the legal position that is contained in the Constitution and the Statutes and the legal principles engrafted in the precedents of this Court having binding effect.

ROLE OF THE '*CHIEF JUSTICE*' AS THE MASTER OF ROSTER

12. There is no dispute, as mentioned above, that '*Chief Justice*' is the Maser of Roster and has the authority to allocate the cases to different Benches/Judges of the Supreme Court. The petitioner has been candid in conceding to this legal position. He himself has gone to the extent of stating in the petition that this principle that '*Chief Justice*' is the Maser of Roster is essential to maintain

judicial discipline and decorum and also for the proper and efficient functioning of the Court. Notwithstanding this concession, it would be imperative to explain this legal position with little elaborations, also by referring to some of the judgments of this Court which spell out the scope and ambit of such a power.

13. The petitioner has himself, in the petition, referred to a three-Judge Bench in ***State of Rajasthan*** v. ***Prakash Chand & Ors.***[5] held that the Chief Justice of the High Court is the Maser of 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:

> "59. 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 conclusions 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.
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> (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.
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> (3) That the puisne Judges can only do that work as is allotted to them by the Chief Justice or under his directions.
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> (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 themselves and one or both the Judges constituting such bench sit singly and take up

5 (1998) 1 SCC 1

any other kind of judicial business not otherwise assigned to them by or under the directions of the Chief Justice.

(5) That the Chief Justice can take cognizance of an application laid before him under Rule 55 (supra) and refer a case to the larger bench for its disposal and he can exercise this jurisdiction even in relation to a part-heard case.

(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."

14. The same principle in ***Prakash Chand's*** case was applied as regards the power of the '*Chief Justice'* and in the matter of ***Campaign for Judicial Accountability and Reforms*** v. ***Union of India & Anr.***[6] five Judge Bench held:

> "6. 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* [*State of Rajasthan* v. *Prakash Chand*, (1998) 1 SCC 1] , it has been clearly stated that the administrative control of the High Court 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* [*State of Rajasthan* v. *Prakash Chand*, (1998) 1 SCC 1] , 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:

6 (2018) 1 SCC 196

> "7. The aforesaid position though stated as regards the High Court, we are absolutely certain that the said principle is applicable to the Supreme Court. We are disposed to think so. Unless such a position is clearly stated, there will be utter confusion. Be it noted, this has been also the convention of this Court, and the convention has been so because of the law. We have to make it clear without any kind of hesitation that the convention is followed because of the principles of law and because of judicial discipline and decorum. Once the Chief Justice is stated to be the Master of the Roster, he alone has the prerogative to constitute Benches. Needless to say, 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.
>
> 8. An institution has to function within certain parameters and that is why there are precedents, rules and conventions. As far as the composition of Benches is concerned, we accept the principles stated in *Prakash Chand* [*State of Rajasthan* v. *Prakash Chand*, (1998) 1 SCC 1] , which were stated in the context of the High Court, and clearly state that the same shall squarely apply to the Supreme Court and there cannot be any kind of command or order directing the Chief Justice of India to constitute a particular Bench."

15. There is a reiteration of this very legal position by another three Judge Bench judgment of this Court in ***Asok Pande*** v. ***Supreme Court of India through its Registrar and Ors.***[7]

WHETHER THE EXPRESSION 'CHIEF JUSTICE' IN THE SUPREME COURT RULES IS TO BE READ AS 'COLLEGIUM' OF FIRST FIVE JUDGES?

7 Writ Petition (Civil) No. 147 of 2018 decided on April 11, 2018

16. In this aforesaid backdrop, we have to consider the principal submission of the petitioner viz. whether the expression '*Chief* Justice' in the Supreme Court Rules is to be read as 'Collegium' of first five Judges? As a corollary, whether power of constituting the Benches and listing the cases be exercised by the Collegium and not the Chief Justice alone? That is the entire edifice on which the petitioner's case is built upon. To begin with, we may remark that ***Asok Pande*** covers this issue as well. That judgment was rendered in a writ petition filed by the petitioner under Article 32 of the Constitution wherein he had raised number of grievances. Apart from some personal grievances raised in the said writ petition pertaining to some proceedings in the Allahabad High Court, relief which he had sought was for issuance of writ of mandamus to the first respondent (Supreme Court of India) to evolve the set of procedure for constituting the Benches and allotment of jurisdiction to different Benches of the Supreme Court. In this behalf, he wanted that there should be a specific rule in the Rules to the effect that the three Judge Bench in the Chief Justice's Court should consist of the Chief Justice and two senior-most Judges and also that Rules be made to the effect that the Constitution Bench shall consist of five senior-most Judges or three senior most Judges and two junior-most Judges.

Similar mandamus was prayed for in respect of the Allahabad High Court to evolve identical set of Rules with respect to formation of Benches.

17. While negating the aforesaid relief claimed by the said petitioner, the Court took note of the provisions of Article 145 of the Constitution which empowers the Supreme Court to make Rules for regulating generally the practice and procedure of the Court, including the matters specifically mentioned in clause (I) of Article 145 of the Constitution, which Rules are to be made with the approval of the President of India. The Court also referred to Order VI of the Rules. This order deals with the constitution of division courts and powers of a Single Judge. Rule 1 thereof provides that it is the Chief Justice who is to nominate the Judges who would constitute a Bench to hear a case, appeal or matter. Where a reference is made to a larger Bench, the Bench making the reference is required to refer the matter to the Chief Justice who will constitute the Bench. Rule 1, thus, empowers the Chief Justice to constitute a Division Bench as well as a larger Bench. In case where the reference is made by a Bench to a larger Bench, again, which Judges will constitute the said Bench is left to the discretion of the Chief Justice. It nowhere says that the

members of the Bench making reference are to be the members of the larger Bench as well. Likewise, Order XXXVIII of the Rules deals with applications for enforcement of fundamental rights under Article 32 of the Constitution. Rule 1 thereof mentions the manner in which a petition under Article 32 of the Constitution is to be dealt with. Likewise, Rule 12 deals with public interest litigation.

18. After incorporating the aforesaid provisions, the Court referred to the three Judge Bench judgment in the case of ***State of Rajasthan*** v. ***Prakash Chand and Others***[8] as well as the Constitution Bench judgment in ***Campaign for Judicial Accountability and Reforms's*** case, the relevant discussion in respect of which has already been elucidated above. On that basis, the relief claimed by the said writ petitioner was termed as *'manifestly misconceived'* and the discussion that ensued in this behalf reads as under:

> "11. In view of this binding elucidation of the authority of the Chief Justice of India, the relief which the petitioner seeks is manifestly misconceived. For one thing, it is a well settled principle that no mandamus can issue to direct a body or authority which is vested with a rule making power to make rules or to make them in a particular manner. The Supreme Court has been authorised under Article 145 to frame rules of procedure. A mandamus of the nature sought cannot be issued. Similarly, the petitioner is not entitled to seek a direction that Benches of this Court

8 (1998) 1 SCC 1

should be constituted in a particular manner or, as he seeks, that there should be separate divisions of this Court. The former lies exclusively in the domain of the prerogative powers of the Chief Justice.

12. Quite apart from the fact that the relief sought is contrary to legal and constitutional principle, there is a fundamental fallacy in the approach of the petitioner, which must be set at rest. The petitioner seeks the establishment of a binding precept under which a three judge Bench in the Court of the Chief Justice must consist of the Chief Justice and his two senior-most colleagues alone while the Constitution Bench should consist of five senior-most judges (or, as he suggests, three 'senior-most' and two 'junior-most' judges). There is no constitutional foundation on the basis of which such a suggestion can be accepted. For one thing, as we have noticed earlier, this would intrude into the exclusive duty and authority of the Chief Justice to constitute benches and to allocate cases to them. Moreover, the petitioner seems to harbour a misconception that certain categories of cases or certain courts must consist only of the senior-most in terms of appointment. Every Judge appointed to this Court under Article 124 of the Constitution is invested with the equal duty of adjudicating cases which come to the Court and are assigned by the Chief Justice. Seniority in terms of appointment has no bearing on which cases a Judge should hear. It is a settled position that a judgment delivered by a Judge speaks for the court (except in the case of a concurring or dissenting opinion). The Constitution makes a stipulation in Article 124(3) for the appointment of Judges of the Supreme Court from the High Courts, from the Bar and from amongst distinguished jurists. Appointment to the Supreme Court is conditioned upon the fulfilment of the qualifications prescribed for the holding of that office under Article 124(3). Once appointed, every Judge of the Court is entitled to and in fact, duty bound, to hear such cases as are assigned by the Chief Justice. Judges drawn from the High Courts are appointed to this Court after long years of service. Members of the Bar who are elevated to this Court similarly are possessed of wide and diverse experience gathered during the course of the years of practise at the Bar. To suggest that any Judge would be more capable of deciding particular cases or that certain categories of cases should be assigned only to the senior-most among the Judges of the Supreme Court has no foundation in principle or precedent. To hold

> otherwise would be to cast a reflection on the competence and ability of other judges to deal with all cases assigned by the Chief Justice notwithstanding the fact that they have fulfilled the qualifications mandated by the Constitution for appointment to the office."
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> (emphasis added)

19. On the aforesaid analogy, the Court also rejected the prayer of the said petitioner in regard to the constitution of Benches in the High Courts as well. Some of the discussion in this behalf, which may be relevant for our purposes as well, is reproduced below:

> "14...The High Courts periodically publish a roster of work under the authority of the Chief Justice. The roster indicates the constitution of Benches, Division and Single. The roster will indicate the subject matter of the cases assigned to each bench. Different High Courts have their own traditions in regard to the period for which the published roster will continue, until a fresh roster is notified. Individual judges have their own strengths in terms of specialisation. The Chief Justice of the High Court has to bear in mind the area of specialisation of each judge, while deciding upon the allocation of work. However, specialisation is one of several aspects which weigh with the Chief Justice. A newly appointed judge may be rotated in a variety of assignments to enable the judge to acquire expertise in diverse branches of law. Together with the need for specialisation, there is a need for judges to have a broad-based understanding of diverse areas of law. In deciding upon the allocation of work and the constitution of benches, Chief Justices have to determine the number of benches which need to be assigned to a particular subject matter keeping in view the inflow of work and arrears. The Chief Justice of the High Court will have regard to factors such as the pendency of cases in a given area, the need to dispose of the oldest cases, prioritising criminal cases where the liberty of the subject is involved and the overall strength, in terms of numbers, of the court. Different High Courts have assigned priorities to certain categories of cases such as those involving senior citizens, convicts who are in jail and women litigants. These priorities are considered while preparing the roster. Impending

> retirements have to be borne in mind since the assignment given to a judge who is due to demit office would have to be entrusted to another Bench when the vacancy arises. These are some of the considerations which are borne in mind. The Chief Justice is guided by the need to ensure the orderly functioning of the court and the expeditious disposal of cases. The publication of the roster on the websites of the High Courts provides notice to litigants and lawyers about the distribution of judicial work under the authority of the Chief Justice. This Court was constituted in 1950. In the preparation of the roster and in the distribution of judicial work, some of the conventions which are adopted in the High Courts are also relevant, subject to modifications having regard to institutional requirements."

20. The aforesaid judgment of the three Judges' Bench is a binding precedent. This judgment, in no uncertain terms, holds that the '*Chief Justice'* in his individual capacity is the Master of Roster and it cannot read as Collegium of first three or five Judges. Thus, it is his prerogative to constitute the Benches and allocate the subjects which would be dealt with by the respective Benches.

21. The Constitution is silent on the role of the '*Chief Justice*'[9]. There is no specific provision relating thereto either in the Constitution or even in any other law. The legal position contained in the aforesaid judgments is based upon healthy practice and sound conventions which have been developed over a period of time and that stands engrafted in the Supreme Court Rules. In fact, it

9 Article 124 of the Constitution merely says that there shall be a Supreme Court of India consisting of Chief Justice of India and thirty other Judges.

is dominated by two stereo-types. One, perpetuated by the common belief and widely endorsed and accepted by all the stakeholders, is that the '*Chief Justice'* occupies the role of '*first among equals*'. The phrase '*among equals'* is generally relatable to the judicial function designed to emphasise the fact that voices of the members of a particular Bench, which may include '*Chief Justice*', are given equal weight and that in deciding cases, the opinion of the '*Chief Justice*' also carries same weight and is no different from those of other Members of the Bench. Thus, in a given case, there is a possibility that the view of the '*Chief Justice'* may be a minority view and in that eventuality, the outcome of case would be what majority decides. The word '*first*' in the aforesaid expression signifies only the fact that the '*Chief Justice'* is the senior most Judge of the Court.

22. The second stereotype is that being the '*Chief Justice'* and senior most Judge of the Court, he is empowered to exercise '*leadership'* on the Court. In this role, the '*Chief Justice*' is expected to be the spokesperson and representative of the judiciary in its dealings with the Executive, Government and the Community. For this purpose, the '*Chief Justice'* has a general responsibility to ensure that the Court promotes change and

reform as appropriate. The judicial reforms, which is a continuing process in order to ensure that there is real access to justice, also becomes the moral responsibility of the '*Chief Justice'.* Such reforms in the administration of justice are not limited to the judicial aspects (i.e. how the cases need to be decided, case management and court management, speedy disposal etc.) but also include reforms on the administrative side of the legal system as well. Procedural reforms and implementation thereof is an integral part of the judicial reform. The ultimate purpose is to dispense justice, which is the highest and noblest virtue. Again, in this role, the '*Chief Justice*' gets the authority and responsibility for the administration of the Court, which gives him the ultimate authority for determining the distribution of judicial work load. In Indian context, this power was given statutory recognition by Section 214(3) of the Government of India Act, 1935 which reads as under:

> "(2) Rules made under this section may fix the minimum number of judges who are to sit for any purpose, so however that no case shall be decided by less than three judges:
>
> Provided that, if the Federal Legislature makes such provision as is mentioned in this chapter for enlarging the appellate jurisdiction of the court, the rules shall provide for the constitution of a special division of the court for the purpose of deciding all cases which would have been within the jurisdiction of the court even if its jurisdiction had not been so enlarged.

> (3) Subject to the provisions of any rules of court, the Chief Justice of India shall determine what judges are to constitute any division of the court and what judges are to sit for any purpose."

23. Under the Constitution, the Supreme Court is given the authority to frame Rules for regulating generally the practice and procedure of the Court, including various subjects as enumerated in sub-Article (1) of Article 145. Supreme Court Rules, 2013 which have been framed in exercise of such a power empowered the Chief Justice to constitute the Benches and list particular matters before such Benches. Similar powers are conferred upon the Chief Justice of the High Courts in the Rules framed by respective High Courts for regulating its procedure.

24. At the same time, the power of the '*Chief Justice'* does not extend to regulate the functioning of a particular Bench to decide cases assigned to him once the cases are allocated to that Bench. A Bench comprising of puisne Judges exercise its judicial function without interference from others, including the '*Chief Justice*', as it is supposed to act according to law. Therefore, when a particular matter is assigned to a particular Bench, that Bench acquires the complete dominion over the case.

25. From the aforesaid, it follows that the two most obvious functions of the '*Chief Justice*' are to exercise judicial power as a Judge of the Court on equal footing as others, being '*among equals*' and to assume responsibility of the administration of the Court.

26. Keeping in mind these postulates and the ratio of the aforesaid binding judgments, it is difficult to accept the argument of the petitioner that the expression *'Chief Justice'* is to be read as *'Collegium'* consisting of five senior-most Judges, including the Chief Justice. The judgments cited by learned senior counsel appearing for the petitioner are in the context of Article 124 of the Constitution wherein the expression '*Chief Justice*' was read as Collegium, after examining the Constitutional Scheme and the objective behind such a provision meant for appointment of Judges. The rationale provided in that context cannot be adopted while interpreting Article 145 of the Constitution, the purpose whereof is altogether different. We agree with the submission of the learned Attorney General that the task of constitution of Benches and allocation of specific cases to those Benches, can more smoothly be performed by the Chief Justice and discharge of such a function by the Collegium would be unworkable and also lead to many practical difficulties.

27. As already taken note of above, the basis of this argument is the judgment of this Court in ***Second Judges'*** case which laid the foundation of the Collegium system for the appointment of Judges. The relevant passages from the said judgment, which are relied upon by the learned senior counsel for the petitioner, have already been extracted above. The Court accepted that there has to be room for discretionary authority within the operation of rule of law. At the same time, it was emphasised that such a discretion should be reduced to minimum extent necessary for proper governance, which can be achieved with the existence of proper guidelines or norms of general application. In this hue, the Court deemed it proper that conferment of the discretionary authority should not be with one individual but to a body of men and, thus, evolved the system of Collegium whereby the Chief Justice will have benefit of full interaction and effective consultation with other senior Judges, to ensure projection of all likely points and procuring the element of plurality in the final decision with the benefit of collective wisdom of all those involved in the process. However, it needs to be emphasised that the aforesaid resolution and concept of Collegium was innovated by judicial interpretation in the context of appointment of Judges in the constitutional Courts, i.e. the Supreme Court as well as the

High Courts. It is also to be borne in mind that as far as the Executive is concerned, it will have virtually no role in such appointments, except the minimalist role specifically delineated in the judgment. This kind of system which is devised for appointment of Judges cannot be replicated when it comes to the role of the Chief Justice as Master of Roster. We have to keep in mind that the Chief Justice, as the head of the Supreme Court of India, and the Chief Justices of the High Courts, have to perform many other functions, on administrative side, in their capacities as Chief Justices. Framing of the Roster and constituting the Benches is one among them. In case the expression *'Chief Justice'* is to be interpreted as *'Collegium'*, it would be difficult to have smooth day to day functioning of the Supreme Court, or for that matter the High Courts. We have already reproduced above that part of the discussion from the judgment in ***Asok Pande*** which took note of various factors that are to be kept in mind for preparing the Roster and indicating the constitution of Benches. Moreover, when it comes to assigning the cases to a particular Bench, it has to be undertaken by the Chief Justice on daily basis in contrast with the meetings of the Collegium for the purpose of appointment of Judges, which is infrequent. Thus, meeting of

Collegium for the purpose of assigning the cases to a particular Bench on daily basis is clearly impracticable.

28. It is trite that ratio of a judgment is what it decides and not what logically follows therefrom. The observations in the three ***Judges'*** case(s) are to be read in the context in which they are rendered. Once that is kept in mind, we arrive at a conclusion that the ratio of those judgments cannot be extended to read the expression *'Chief Justice'*, wherever it occurs, to mean the *'Collegium'* of the senior Judges.

29. The argument of the learned counsel for the petitioner that function such as *'framing the Roster'* and *'listing of important and sensitive matters'* are extremely crucial and cannot be left to the sole discretion of the Chief Justice is also met in ***Asok Pande***, in the following manner:

> "15. Underlying the submission that the constitution of Benches and the allocation of cases by the Chief Justice must be regulated by a procedure cast in iron is the apprehension that absent such a procedure the power will be exercised arbitrarily. In his capacity as a Judge, the Chief Justice is *primus inter pares*: the first among equals. In the discharge of his other functions, the Chief Justice of India occupies a position which is sui generis. Article 124(1) postulates that the Supreme Court of India shall consist of a Chief Justice of India and other Judges. Article 146 reaffirms the position of the Chief Justice of India as the head of the institution. From an institutional perspective the Chief Justice is placed at the helm of the Supreme Court. In the allocation of cases and the constitution of benches the Chief Justice has an exclusive prerogative. As

> a repository of constitutional trust, the Chief Justice is an institution in himself. The authority which is conferred upon the Chief Justice, it must be remembered, is vested in a high constitutional functionary. The authority is entrusted to the Chief Justice because such an entrustment of functions is necessary for the efficient transaction of the administrative and judicial work of the Court. The ultimate purpose behind the entrustment of authority to the Chief Justice is to ensure that the Supreme Court is able to fulfil and discharge the constitutional obligations which govern and provide the rationale for its existence. The entrustment of functions to the Chief Justice as the head of the institution, is with the purpose of securing the position of the Supreme Court as an independent safeguard for the preservation of personal liberty. There cannot be a presumption of mistrust. The oath of office demands nothing less."

30. In this entire scheme, it needs to be highlighted that the judiciary is assigned a pivotal role under the Constitution. In a Constitution Bench judgment rendered only a day before[10] in the case of ***Government of NCT of Delhi*** v. ***Union of India & Another***, the role of the Court as final arbiter of the Constitution and upholder of the rule of law is captured in the following words:

> "4. This Court, being the final arbiter of the Constitution, in such a situation, has to enter into the process of interpretation with the new tools such as constitutional pragmatism having due regard for sanctity of objectivity, realization of the purpose in the truest sense by constantly reminding one and all about the sacrosanctity of democratic structure as envisaged by our Constitution, elevation of the precepts of constitutional trust and morality, and the solemn idea of decentralization of power and, we must say, the ideas knock at the door to be invited. The compulsive invitation is the warrant to sustain the values of democracy in the prescribed framework of law. The aim is to see that in the ultimate eventuate, the rule of law

10 Judgment dated July 4, 2018 in Civil Appeal No. 2357 of 2017 titled Government of NCT of Delhi v. Union of India & Another with other connected appeals.

> prevails and the interpretative process allows the said idea its deserved space, for when the rule of law is conferred its due status in the sphere of democracy, it assumes significant credibility.
>
> 5. We would like to call such a method of understanding "confluence of the idea and spirit of the Constitution", for it celebrates the grand idea behind the constitutional structure founded on the cherished values of democracy."

31. The Constitution makers, thus, reposed great trust in the judiciary by assigning it the powers of judicial review of not only the administrative acts of the Government/Executive but even the legislative acts of the Legislature. In the process, judiciary discharges one of the most important functions, namely, the administration of justice. It does so by upholding the rule of law and, in the process, protecting the Constitution and the democracy. Our Constitution guarantees free speech, fair trials, personal freedom, personal privacy, equal treatment under the law, human dignity and liberal democratic values. This bundle of non-negotiable rights and freedoms has to be protected by the judiciary. For this reason, independence of judiciary is treated as one of the basic features of the Constitution. Here, we may point out four major aspects of judicial status or performance, which are: independence; impartiality; fairness; and competence.

32. Alexander M. Bickel had emphasised way back in 1962[11] that the judiciary is the least dangerous branch as it has neither the purse nor the sword, by reproducing following words of wisdom of Alexander Hamilton[12]:

> "Whoever attentively considers the different departments of power must perceive, that, in a government in which they are separated from each other, the judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the Constitution; because it will be least in a capacity to annoy or injure them. The Executive not only dispenses the honors, but holds the sword of the community. The legislature not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary, on the contrary, has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever. It may truly be said to have neither FORCE nor WILL, but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments."

33. The judiciary even without the sword or the purse, remains the guardian of the Constitution. Its sole strength lies in the public confidence and the trust. A.S. Anand, J. (as His Lordship then was, later the Chief Justice of India) highlighted this aspect (though in the context of contempt jurisdiction of the Court) in ***State of Rajasthan*** v. ***Prakash Chand & Ors.***[13] in the following words:

> "The virtue of humility in the Judges and a constant awareness that investment of power in them is meant for

11 in his book 'The Least Dangerous Branch'
12 in the 78th Federalist, "The Judges as Guardians of the Constitution".
13 (1998) 1 SCC 1

use in public interest and to uphold the majesty of rule of law, would to a large extent ensure self restraint in discharge of all judicial functions and preserve the independence of judiciary. It needs no emphasis to say that all actions of a Judge must be judicious in character. **Erosion of credibility of the judiciary, in the public mind, for whatever reasons, is greatest threat to the independence of the judiciary.** Eternal vigilance by the Judges to guard against any such latent internal danger is, therefore, necessary, lest we "suffer from self-inflicted mortal wounds". We must remember that the Constitution does not give unlimited powers to any one including the Judge of all levels. **The societal perception of Judges as being detached and impartial referees is the greatest strength of the judiciary and every member of the judiciary must ensure that this perception does not receive a set back consciously or unconsciously.** Authenticity of the judicial process rests on public confidence and public confidence rests on legitimacy of judicial process. Sources of legitimacy are in the impersonal application by the Judge of recognised objective principles which owe their existence to a system as distinguished from subjective moods, predilections, emotions and prejudices."

34. We may also quote the following passage from ***S.P. Gupta*** (per Pathak, J.):

> "While the administration of justice draws its legal sanction from the Constitution, its credibility rests in the faith of the people. Indispensable to that faith is the independence of the judiciary. An Independent and impartial judiciary supplies the reason for the judicial institution, it also gives character and content to the constitutional milieu."

35. In the same decision, J.S. Verma, J. echoed the aforesaid sentiments with the following message:

> "The role of the Judiciary under the Constitution is a pious trust reposed by the people. The Constitution and the democratic-polity thereunder shall not survive, the day Judiciary fails to justify the said trust. If the Judiciary fails,

> the Constitution fails and the people might opt for some other alternative."

36. Thus, the faith of the people is the bed-rock on which the edifice of judicial review and efficacy of the adjudication are founded. Erosion of credibility of the judiciary, in the public mind, for whatever reasons, is greatest threat to the independence of the judiciary. We live in an age of accountability. What is required of Judges is changing. Judgments of the Courts are widely discussed, debated and even criticised. In this age of technology, open society and liberal democracy coupled with varied nature of cases raising complex issues which are decided by the Courts, including '*hard cases*' any outcome whereof may be susceptible to criticism, as both views may appear to be equally strong. In that sense, judiciary walks the tightrope of independence. It has also become a regular feature that even laymen, who are constitutionally illiterate, enter such debate and evaluate the outcomes influenced by their emotions, rather than on legal or constitutional principles.

37. The world is changing fast. However, the fundamental qualities which the public seek in a Judge have remained the same, as these are eternal verities, which will never change. These are wisdom, patience, a sense of practical reality, fairness and

balance, independence of mind and knowledge of law, moral courage or fortitude, and a total commitment that justice should be administered according to law. At the end of the day, it is the virtue of righteousness, impartiality, objectivity and scholarship which a Judge commands to ensure respectability to his judgment.

38. In the aforesaid backdrop, role of the '*Chief Justice*' as Master of Roster also assumes much significance. Each '*Chief Justice'* performs his role by consultation and consensus, after taking into account various factors including individual Judges' interests and abilities, their specialisation in a particular area, their capacity to handle particular type of cases and many other relevant considerations. However, the exercise of such a power with wisdom has to be left to the '*Chief Justice*' who is given the prerogative of the '*Master of the Roster*'.

39. Mr. Dave had referred to certain international practices, namely, the practices adopted by the Apex Courts in other jurisdictions. We may only record that the judicial systems in different countries have different styles of functioning and the practices have been developed in various countries keeping in view the structure of the Courts[14]. Even the procedural characteristics of litigation are

14 For example, in U.S., all Judge of the Supreme Court sit as a Court and not in Benches.

different. Therefore, system prevalent and developed in one jurisdiction cannot be mechanically adopted by judicial system in other countries. At the same time, there is no harm in adopting those healthy practices which have been developed in foreign jurisdictions and which can be easily adopted because of their universal application. After all, no system is fool-proof. There is always a scope for improvement. Reforms in the administration of justice, whether on judicial side or administratively, is a continuing process. We all learn from experiences and strive to do better.

40. Of course, it goes without saying that the matters need to be listed and assigned to the Benches in accordance with the Supreme Court Rules, 2013 and Handbook of Practice and Procedure.

41. Having regard to the aforesaid principles laid down in the binding precedents, it is difficult to accept the prayer of the petitioner that the expression '*Chief Justice*' appearing in the Supreme Court Rules, 2013 be read as '*Collegium*' of five senior most Judges for the purpose of allocating the matters. At the same time, we feel that debate generated as a result has served its purpose. While saying so, we have in mind the following words of Hon'ble

Justice Tun Mohamed Dzaiddin Abdullah, the then Chief Justice of Malaysia[15]:

> "As judges, we are used to hearing, marshalling and evaluating evidence.
>
> In fact, when it comes down to brass tacks, that is just what we judges are perennially obliged to do throughout the better part of our life on the Bench. Every decision we make is momentous, for it touches the lives and fortunes of other people.
>
> Thus it is good, therefore from time to time, like today, and the next three days, for us to take a hard look at ourselves so as to ensure that it is a responsibility which we are discharging."

42. We conclude by extracting following message conveying deep meaning, written in the 'Introduction' to the just released book authored by eminent lawyer Fali S. Nariman[16]:

> "Second: Institutions created by our Constitution, like the Supreme Court, are, and will always remain, greater than the men and women for the time being in-charge. And this is why our Court will always remain 'Hon'ble' as is the nine-judge Bench of the-more-than-two-hundred-year-old Supreme Court of the United States, which is reminded by the Clerk of the Court on each day that it sits (proclaimed in a loud voice before the justices take their seats): "God save the United States and this Hon'ble Court", and
>
> Third: As for the men and women on the Bench for the time being in-charge, one can almost hear them say (as Edmund Burke had said in an election speech way back in 1780):

15 Taken from Welcoming Address given by him in a workshop on "judicial accountability" organised by Commonwealth Lawyers' Association in Kuala Lumpur in April, 2002.

16 *God Save the Hon'ble Supreme Court and Other Opinions*.

> "Applaud us when we run; console us when we fall; cheer us when we recover; but let us pass on-for God's sake, let us pass on".

43. We, thus, dispose of the writ petition without any further directions.

.....J.
(A.K. SIKRI)

NEW DELHI;
JULY 06, 2018.

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (C) NO. 789 OF 2018
(ARISING OUT OF DIARY NO. 12405 OF 2018)

SHANTI BHUSHAN … PETITIONER

VERSUS

SUPREME COURT OF INDIA
THROUGH ITS REGISTRAR & ANR. … RESPONDENTS

J U D G M E N T

ASHOK BHUSHAN, J.

I have advantage of going through the draft judgment of my esteemed brother Justice A.K. Sikri. I entirely agree with the opinion expressed by my brother, however, looking to the importance of the issues raised in the writ petition I also express my views on the subject.

2. The petitioner, a senior advocate of this Court and former Law Minister has filed this writ petition under Article 32 of the Constitution praying for following reliefs:-

“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 mod-

ification 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."

3. The petitioner in the writ petition pleads that although the Chief Justice is the master of roster and has the authority to allocate cases to different benches/judges of the Supreme Court, but however the power to exercise such authority cannot be used in such a manner as to assert any superior authority by the Chief Justice. In this respect, it is relevant to reproduce the pleading of the petitioner in Paragraph 4 and Paragraph 6 of the writ petition, which is to the following effect:-

*"**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.*
>
> ***6.*** *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."*

4. The petitioner refers to a Three Judge Bench judgment in ***State of Rajasthan Vs. Prakash Chand & Ors., (1998) 1 SCC 1***, wherein it was 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. It is further pleaded in the writ petition that the writ petition raises questions relating to the

functioning of the Registry of the Supreme Court and the powers exercised by the 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. Petitioner, however, specifically states in Paragraph 14 of the writ petition that “present petition does not seek to question any judicial orders and/or judgments”. The petitioner has made reference to certain cases, which according to petitioner reflects and establishes gross abuse of powers. The petitioner in context of above pleading has prayed in the writ petition that the word ‘Chief Justice of India’ must be deemed to mean a collegium of five senior judges of this Hon’ble Court, the relief claimed in the writ petition as noted above, is to the above effect.

5. Shri Dushyant Dave, learned senior counsel assisted by Shri Prashant Bhushan, appearing for the petitioner submits that constitution of benches being a sensitive

matter, it should not be allowed to or such power should not be entrusted only to the Chief Justice but as this Court has held while interpreting Article 124 that recommendation for appointment of judges for the Supreme Court and the High Court should be made by a collegium consisting of Chief Justice and four senior judges, the same interpretation or principle should be applied while finalizing the roster. Formulation of roster should be entrusted to collegium consisting of Chief Justice and four senior judges. Learned senior counsel submits that the petitioner is not making any allegation and only endeavour is to devise a system so that there be no handpicking of cases. This Court while interpreting Article 124 has relied on collective wisdom while making recommendation for appointment of judges, the same interpretation should be applied in exercise of power by Chief Justice while formulating the roster. Alternatively, it is submitted that power to frame roster be given to entire Court and the entire Court can decide the principles for finalizing the roster. Learned

senior counsel for the petitioner has also referred to various international practices, which is adopted in different countries in respect of allocation of cases to different benches.

6. Shri K.K. Venugopal, learned Attorney General opposing the writ petition submits that under the Constitution and the Rules framed thereunder, it is the Chief Justice, who is contemplated to take decision regarding allocation of cases and constitution of benches. It is submitted by learned Attorney General that the exercise of allocation of cases and framing of roster is an exercise, which cannot be taken by multiple persons. He submits that there can be difference in members of collegium regarding allocation of cases, which shall hamper the smooth functioning of the Court. He submits that exercise of roster is entirely different from exercise of making recommendation for appointment of judges of this Court. By participation of other judges, there is likelihood that conflict of interest. Multiplicity of judges forming the

roster will lead to chaos, hampering the smooth functioning of the Court. Learned Attorney General has referred to various judgments of this Court for the proposition that Chief Justice has been held to be master of roster and it is sole prerogative of Chief Justice to constitute benches and allocate cases to different benches for smooth functioning of the Court.

Shri Dushyant Dave replying the submission of learned Attorney General submits that the objective of writ petition is to evolve a transparent and non-arbitrary system for allocation of cases and formation of benches to allay any criticism of functioning of this Court. The object of Writ Petition is not to make allegations against anyone or to question any judgment of this Court; rather the entire endeavour is to improve the judicial system to strengthen the independence of judiciary.

7. We have considered the submissions of the learned counsel for the parties and have perused the records.

8. Before we consider the rival submissions raised by the learned counsel for the parties, it is relevant to notice

the relevant constitutional provisions and the precedents on the subject. The Supreme Court of India is successor of Federal Court, which was established in the British India by the Government of India Act, 1935. For the first time, the Chief Justice of India was contemplated by Section 200 of the Government of India Act, 1935. Prior to establishment of Federal Court, it was High Courts in different States administering Justice. Against the decision of the High Court, appeal was contemplated before the Judicial Committee of the Privy Council. For the purposes of this case, it is not necessary to trace the judicial history of Courts in this country.

9. Section 200(1) of the 1935 Act, which provided for establishment and constitution of Federal Court was to the following effect:-

> *"**200.-(1)** There shall be a Federal Court consisting of a Chief Justice of India and such number of other judges as His Majesty may deem necessary, but unless and until an address has been presented by the Federal Legislature to the Governor-General for submission to His Majesty praying for an increase in the number of judges, the number of puisne judges shall not exceed six."*

10. Section 214 of the 1935 Act provided for rules of the Court etc., which was as follows:

> *"**214.**-(1) The Federal Court may from time to court, with the approval of the Governor-General in his discretion, make rules of court for regulating generally the practice and procedure of the court, including rules as to the persons practising before the court, as to the time within which appeals to the court are to be entered, as to the costs of and incidental to any proceedings in the court, and as to the fees to be charged in respect of proceedings therein, and in particular may make rules providing for the summary determination of any appeal which appears to the court to be frivolous or vexatious or brought for the purpose of delay.*
>
> *(2) Rules made under this section may fix the minimum number of judges who are to sit for any purpose, so however that no case shall be decided by less than three judges :*
>
> *Provided that, if the Federal Legislature makes such provision as is mentioned in this chapter for enlarging the appellate jurisdiction of the court, the rules shall provide for the constitution of a special division of the court for the purpose of deciding all cases which would have been within the jurisdiction of the court even if its jurisdiction had not been so enlarged.*
>
> *(3) Subject to the provisions of any rules of court, the Chief Justice of India shall determine what judges are to constitute any division of the court and what judges are to*

sit for any purpose.

(4) No judgment shall be delivered by the Federal Court save in open court and with the concurrence of a majority of the judges present at the hearing of the case, but nothing in this subsection shall be deemed to prevent a judge who does not concur from delivering a dissenting judgment.

(5) All proceedings in the Federal Court shall be in the English language."

11. Sub-section (3) of Section 214 specifically provided; that subject to the provisions of any rules of court, the Chief Justice of India shall determine what judges are to constitute any division of the court and what judges are to sit for any purpose. The Chief Justice of India thus was exercising jurisdiction of constituting any division of the Court and nominating judges for sitting for different purposes.

12. Part V Chapter IV of the Constitution of India deals with the Union Judiciary. Article 145 of the Constitution provides for the rules of the Court. Sub-article (1) of Article 145 provides that subject to the provisions of any law made by Parliament, the Supreme Court may from

time to time, with the approval of the President, make rules for regulating generally the practice and procedure of the Court, including various subjects as enumerated in sub-article (1). In exercise of power under Article 145, Supreme Court has framed rules from time to time. The Supreme Court Rules, 1950, the Supreme Court Rules, 1966 and thereafter the Supreme Court Rules, 2013 have been framed in exercise of power under Article 145(1). In the Supreme Court Rules, 2013, Order VI deals with constitution of Division Courts and Powers of the Single Judge. Rules 1 and 2 of Order VI are as follows:-

> *"1. Subject to the other provisions of these rules every cause, appeal or matter shall be heard by a Bench consisting of not less than two Judges nominated by the Chief Justice.*
>
> *2. Where in the course of the hearing of any cause, appeal or other proceeding, the Bench considers that the matter should be dealt with by a larger Bench, it shall refer the matter to the Chief Justice, who shall thereupon constitute such a Bench for the hearing of it."*

13. The Chief Justice of India of the erstwhile Federal Court and the Chief Justice of India as per the Constitution

of India has been exercising the jurisdiction of formulating the roster for convenient distribution of Court's business and constituting the benches from time to time.

14. This Court had also occasion to consider time and again the nature and extent of the powers of the Chief Justice of India. For the purposes of this case, it is useful to refer to few of the precedents in the above respect. A Three Judge Bench of this Court in ***State of Rajasthan Vs. Prakash Chand and Others,*** (1998) 1 SCC 1, which judgment has also been referred to and relied on by the petitioner, had elaborately considered the subject in issue. In regard to the power of the Chief Justice in regard to constitution of benches, this Court after referring to Para 44 of Rajasthan High Court Ordinance, 1949 as well as Rule 54 of the Rules of the High Court of Judicature for Rajasthan laid down following in Paragraph 10 :-

> ***"10.*** *A careful reading of the aforesaid provisions of the Ordinance and Rule 54 (supra) shows that the administrative control of the High Court vests in the Chief Justice of the High Court alone and that it is his prerogative to distribute business of the High Court both*

judicial and administrative. He alone, has the right and power to decide how the Benches of the High Court are to be constituted: which Judge is to sit alone and which cases he can and is required to hear as also as to which Judges shall constitute a Division Bench and what work those Benches shall do. In other words the Judges of the High Court can sit alone or in Division Benches and do such work only as may be allotted to them by an order of or in accordance with the directions of the Chief Justice. That necessarily means that it is not within the competence or domain of any Single or Division Bench of the Court to give any direction to the Registry in that behalf which will run contrary to the directions of the Chief Justice. Therefore in the scheme of things judicial discipline demands that in the event a Single Judge or a Division Bench considers that a particular case requires to be listed before it for valid reasons, it should direct the Registry to obtain appropriate orders from the Chief Justice. The puisne Judges are not expected to entertain any request from the advocates of the parties for listing of case which does not strictly fall within the determined roster. In such cases, it is appropriate to direct the counsel to make a mention before the Chief Justice and obtain appropriate orders. This is essential for smooth functioning of the Court. Though, on the judicial side the Chief Justice is only the "first amongst the equals", on the administrative side in the matter of constitution of Benches and making of roster, he alone is vested with the necessary powers. That the power to make roster exclusively vests in the Chief Justice and that a daily cause list is to be prepared under the directions of the Chief

Justice as is borne out from Rule 73, which reads thus:

> *"73. Daily Cause List.—The Registrar shall subject to such directions as the Chief Justice may give from time to time cause to be prepared for each day on which the Court sits, a list of cases which may be heard by the different Benches of the Court. The list shall also state the hour at which and the room in which each Bench shall sit. Such list shall be known as the Day's List."*

15. This Court in the above case has also referred to earlier judgments of this Court in ***Inder Mani and Others Vs. Matheshwari Prasad and Others, (1996) 6 SCC 587*** and different judgments rendered by different High Courts reiterating the same principles after referring to various judgments. After approving the view taken by different High Courts in various cases, following was laid down in Paragraph 23:-

> *"**23.** The above opinion appeals to us and we agree with it. Therefore, from a review of the statutory provisions and the cases on the subject as rightly decided by various High Courts, to which reference has been made by us, it follows that no Judge or a Bench of*

Judges can assume jurisdiction in a case pending in the High Court unless the case is allotted to him or them by the Chief Justice. Strict adherence of this procedure is essential for maintaining judicial discipline and proper functioning of the Court. No departure from it can be permitted. If every Judge of a High Court starts picking and choosing cases for disposal by him, the discipline in the High Court would be the casualty and the administration of justice would suffer. No legal system can permit machinery of the Court to collapse.....”

16. This Court has recorded its conclusion in Para 59, which is to the following effect:-

*“**59.** 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 conclusions 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 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.

(5) That the Chief Justice can take cognizance of an application laid before him under Rule 55 (supra) and refer a case to the larger bench for its disposal and he can exercise this jurisdiction even in relation to a part-heard case.

(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.

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17. There are series of judgments reiterating the same view as expressed by this Court in **State of Rajasthan (supra)**. In an earlier judgment, ***Union of India and Another Vs. Raghubir Singh (Dead) By LRs. Etc.,***

(1989) 2 SCC 754¸ a Constitution Bench of this Court noticed that as a general rule of practice and convenience, the Court should sit in Divisions and each Division being constituted of Judges whose number may be determined by the exigencies of judicial need, by the nature of the case including any statutory mandate relative thereto, and by such other considerations which the Chief Justice, in whom such authority devolves by convention. In Paragraph 27, following has been observed:-

> *".....It cannot be doubted that in order to promote consistency and certainty in the law laid down by a superior Court, the ideal condition would be that the entire Court should sit in all cases to decide questions of law, and for that reason the Supreme Court of the United States does so. But having regard to the volume of work demanding the attention of the Court, it has been found necessary in India as a general rule of practice and convenience that the Court should sit in Divisions, each Division being constituted of Judges whose number may be determined by the exigencies of judicial need, by the nature of the case including any statutory mandate relative thereto, and by such other considerations which the Chief Justice, in whom such authority devolves by convention, may find most appropriate....."*

18. In ***D.C. Saxena Vs. Hon'ble The Chief Justice of India,*** (1996) 5 SCC 216, this Court held that it is the Chief Justice's prerogative to constitute benches and assign the judicial work and the judicial business would not hinge on the whim of a litigant. In Paragraph 26, following has been laid down:-

> ***"26. ……..****The Chief Justice's prerogative to constitute benches and assignment of judicial business would not hinge on the whim of a litigant."*

19. This Court further in ***State of Uttar Pradesh and Others Vs. Neeraj Chaubey and Others, (2010) 10 SCC 320*** held that power of Chief Justice of allocation of business of the High Court flows not only from the provisions contained in sub-section (3) of Section 51 of the States Reorganisation Act, 1956, but inheres in him in the very nature of things. Following was observed in Para 9 :-

> *"**9.** .....If the Judges were free to choose their jurisdiction or any choice was given to them to do whatever case they may*

> *like to hear and decide, the machinery of the Court would collapse and the judicial work of the Court would cease by generation of internal strife on account of hankering for a particular jurisdiction or a particular case.....”*

20. It was further cautioned in the above case that in event the distribution is not done by the Chief Justice of India, it may generate internal strife on account of hankering for a particular jurisdiction or a particular case. The law laid down by this Court as is clear from precedents noted above, is that allocation of business of Court by the Chief Justice not only flows from the Constitutional provisions but is held to be prerogative of the Chief Justice and which is a convention followed from the very beginning. Apart from above, as noted above, the power of the Chief Justice to allocate cases flows from rules framed under Article 145 of the Constitution of India.

21. Now, we come to the submission which has been put forth by Shri Dushyant Dave forcefully that Chief Justice of

India while allocating cases and forming benches for disposal of business of the Court should be read as collegium. Shri Dave in support of his above argument takes sustenance from the Constitution Bench judgment of this Court. In Judges case i.e. ***S.P. Gupta Vs. Union of India, (1981) Supp. SC 87***, which was subsequently elaborated and clarified by second Judges case i.e. ***Supreme Court Advocates on Record Association and Others Vs. Union of India, (1993) 4 SCC 441*** and third Judges case i.e. ***Special Reference No. 1 of 1998, (1998) 7 SCC 739***. He submits that when Chief Justice has been read as collegium in exercise of his constitutional functions of making recommendation for appointment of judges, the same interpretation be put on the word "Chief Justice" while he exercises power of allocating business of the Court. It is useful to refer to judgment of Seven Judges Bench of this Court in ***S.P. Gupta (supra)*** to recapitulate the law as laid down in the above cases. This Court had occasion to consider Article 124(2) of the Constitution, which contains provision for

appointment of judges of the Supreme Court and of the High Courts. Article 124(2) is as follows:-

> ***124(2).*** *Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose and shall hold office until he attains the age of sixty five years:*
>
> *Provided that in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of India shall always be consulted:*
>
> *(a) a Judge may, by writing under his hand addressed to the President, resign his office;*
>
> *(b) a Judge may be removed from his office in the manner provided in clause (4).*

22. Justice Bhagwati, speaking for majority in ***S.P. Gupta's case (supra)*** while interpreting Article 124(2) laid down following in Paragraph 31:-

> *"31. .....The petitioners contended that the Central Government may, if it thinks fit, consult one or more of the Judges of the Supreme Court and of the High Courts or it may not consult any and where it does not, the Chief Justice of India will be the only constitutional functionary required to be consulted and in such a case the Central Government must accept the opinion of the Chief*

Justice of India as binding upon it. We do not think this argument is well founded. In the first place it is not justified by the plain language of clause (2) of Article 124. This clause clearly provides for consultation as a mandatory exercise and the only matter which is left to the discretion of the Central Government is the choice of the Judge of the Supreme Court and the High Courts who may be consulted. The words "as the President may deem necessary" qualify only the preceding words "such of the Judges of the Supreme Court and of the High Courts in the States." Which of the Judges of the Supreme Court and of the High Courts should be consulted is left to the discretion of the Central Government but consultation there must be with one or more of the Judges of the Supreme Court and of the High Courts. The Central Government must consult at least one Judge out of the Judges of the Supreme Court and of the High Courts before exercising the power of appointment conferred by clause (2) of Article 124. This requirement is prescribed obviously because the Constitution-makers did not think it desirable that one person alone, howsoever high and eminent he may be, should have a predominant voice in the appointment of a Judge of the Supreme Court. But it seems that this requirement is not complied with in making appointments on the Supreme Court Bench presumably under a misconception that it is not a mandatory but only an optional provision. 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 predelictions 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 predeliction 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.....”*

23. In Second Judges case, i.e. ***Advocates on Record Association case (supra)***, Justice J.S. Verma, speaking for majority laid down following in Paragraph 427 and 478:-

> *“**427. .....**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.

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.

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24. In Third Judges case, ***Special Reference No. 1 of 1998, (1998) 7 SCC 739***, approving the construction as was put by this Court in Second Judges case, **Justice S.P. Bharucha**, as he then was, in Para 160 held that collegium should consist of the Chief Justice of India and four senior most puisne judges of the Supreme Court. In Para 44, following answers were recorded:-

*"**44.** The questions posed by the Reference are now answered, but we should emphasise that the answers should be read in conjunction with the body of this opinion:*

1. The expression "consultation with the Chief Justice of India" in Articles 217(1) and 222(1) of the Constitution of India requires consultation with a plurality of Judges in the formation of the opinion of the Chief Justice of India. The sole individual opinion of the Chief Justice of India does not constitute "consultation" within the meaning of the said articles.

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3. 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 seniormost 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 seniormost 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."

25. The word "Chief Justice" in Article 124 was read as collegium in Second and Third Judges case looking to the constitutional scheme and constitutional objective as perceived by the above provision. Article 124(2) expresses constitutional provision of consultation by the President in such of judges of Supreme Court and the High Courts, as the President may deem necessary.

26. The proviso contains specific requirement of

consultation with the Chief Justice of India in case of appointment of judges other than the Chief Justice. Article 124 reveals thus two necessary ingredients regarding consultation, i.e. (i) Chief Justice of India shall always be consulted in case of appointment of judges other than the Chief Justice; (ii) the President shall make appointment after consultation with such of the judges of the Supreme Court and of the High Courts in the States as the President may deem necessary. In addition to consultation with the Chief Justice of India, consultation with other judges was specifically made part of the Constitutional scheme. This Court in Second Judges case and Third Judges Case taking note of the above constitutional scheme has read the word "Chief Justice" as collegium. Thus, the reason for reading the word "Chief Justice" as collegium in Article 124 has constitutional basis as elaborated in Second Judges case and Third Judges Case.

27. With regard to procedure and practice of Supreme Court, Article 145 empowers the Supreme Court to frame

rules with the approval of the President. The word practice and procedure of the Court are wide enough to include practice and procedure relating to preparation of roster and allocation of cases. The Rules framed by Supreme Court under Article 145 specifically refers the Chief Justice in Chapter VI as noted above, the Chief Justice, who is to nominate the bench for hearing every case, appeal or matter. There is no indication in any of the constitutional provisions or rules framed thereunder that for allocation of cases and formation of benches, Chief Justice should be read as collegium. For reading Chief Justice as collegium, under Article 124, there was a constitutional basis as observed above. This Court had also on several occasions, noticed and expressed reasons for holding that it is the only prerogative of the Chief Justice to allocate cases and nominate the bench. This Court in ***State of Uttar Pradesh and others Vs. Neeraj Chaubey and Others (supra)*** has made following weighty observations:-

> *"**9.** .....If the Judges were free to choose their jurisdiction or any choice was*

> *given to them to do whatever case they may like to hear and decide, the machinery of the Court would collapse and the judicial work of the Court would cease by generation of internal strife on account of hankering for a particular jurisdiction or a particular case.....”*

28. The submission of learned Attorney General is that allocation of cases and constitution of benches, if it is given in the multiple hands, there shall be differences and hurdles in smooth distribution of work. We entirely agree with the above submission of learned Attorney General. We are thus unable to accept the submission of learned senior counsel for the petitioner that in allocating cases and formulating benches of the Supreme Court, the word "Chief Justice" should be read as collegium, which submission is unfounded and is rejected.

29. It is submitted by Shri Dave that in the Constitution whereas Chief Justice was to exercise any power individually, said provisions have been specifically included. He has referred to Article 130 of the Constitution which provides:

"***130. Seat of Supreme Court.-*** *The*

> *Supreme Court shall sit in Delhi or in such other place or places, as the Chief Justice of India may, with the approval of the President, from time to time, appoint."*

He has further referred to Article 146 which provides that the appointments of officers and servants of the Supreme Court shall be made by the Chief Justice of India or such other Judge or officer of the Court as he may direct. He has referred to sub-clause (2) of Article 146, which empowered the Chief Justice of India or some other Judge or officer of the Court authorised by the Chief Justice of India to make rules regarding conditions of service of officers and servants of the Supreme Court subject to provision of any law made by the President. There is no doubt that above provision of the Constitution provides for the Chief Justice to exercise particular powers.

30. The submission that Constitution does not specifically mention Chief Justice to exercise power of allocation of cases and constitution of Benches, hence, Chief Justice is not empowered to do the same, is not a

valid submission. Under the constitutional scheme itself as contained in Article 145, the practice and procedure of the Supreme Court is to be regulated by the rules made by the Supreme Court with approval of the President.

31. As noted above, rules framed under Article 145 specifically empower the Chief Justice to nominate Benches for hearing cases or appeal. Non-containing of any specific provision in the Constitution empowering the Chief Justice to frame the roster to allocate the cases is inconsequential since the entire subject was to be covered by rules made under Article 145.

32. In considering the submissions raised in this case, we are reminded of prophetic words of Mr. Justice Holmes in ***Northern Securities Co. v. United States, 48 LAWYERS' EDITION U.S. 196 (1903).*** Holmes, J. said:

> "*Great cases, like hard cases, make bad law. For great cases are called great, not by reason of their real importance in shaping the law of the future, but because of some accident of immediate overwhelming interest which appeals to the feelings and distorts the judgment. These*

> *immediate interests exercise a kind of hydraulic pressure which makes what previously was clear seem doubtful, and before which even well settled principles of law will bend."*

33. Our views as expressed above are fortified by a recent Constitution Bench judgment of this Court in ***Campaign for Judicial Accountability and Reforms v. Union of India & Anr., (2018) 1 SCC 196*** and three Judge Bench judgment of this Court dated 11.04.2018 in Writ Petition (C) No.147 of 2018, ***Asok Pv. ande Supreme Court India through its Registrar and Ors., (2018) 5 SCC Scale 481.***

34. Shri Dave also raised an alternate submission; that allocation of cases and constitution of benches should be undertaken by the entire Court. He submitted that all the Judges can sit together and formulate the procedure for constitution of Benches. The rules framed by the Supreme Court under Article 145 are the rules made by the Court and when the rules made by the Court specifically empowers the Chief Justice to nominate Benches for hearing a cause or appeal or matter, which has been conventionally the prerogative of the Chief

Justice. The submission, that full Court should allocate cases and constitute the Benches, run counter to the constitutional scheme read with rules framed under Article 145. We, thus, are not impressed by the submission of Shri Dave that the roster should be prepared by the entire Court.

35. In so far as submission made by Shri Dave that in allocation and listing of cases the Supreme Court Rules, 2013 have to be followed, no exception can be taken to the above submission. When the statutory rules are framed the entire business of the Court which is covered by the Rules has to be dealt accordingly.

36. Law settled by this Court in large number of cases as noticed above as well as judgments of three-Judge Bench and Constitution Benches noted above are binding on us and settled law cannot be unsettled on the premise on which the entire writ petition is founded.

37. Shri Dave during his submission has also referred to the handbook on “practice and procedure and office procedure (2017)”. The handbook is a compilation of

practice and procedure and office procedure for guidance of Registry. He has referred to Chapter V – Powers, Duties and Functions of the Registrar, Chapter VI – Roster, Chapter XIII – Listing of Cases. The above handbook is a written guide for smooth transaction of the business of the Court. Various instructions enumerated in different Chapters provide for the conduct and business of the Court in orderly manner with certainty, there cannot be any dispute that when a procedure is laid down to be followed by officials of the Supreme Court, all business is to be transacted in the said manner. As noted above, for the purposes of this case, we need not dwell into listing of some cases as enumerated in the writ petition. Learned counsel for the petitioner candidly submitted that petitioner is not questioning any order or judgment referred to in the writ petition. The endeavour of the writ petitioner is to find out an appropriate procedure for proper and fair distribution of cases and constitution of Benches.

38. Learned counsel for the petitioner has also referred

to and relied on various international practices. During the submission he has referred to practices pertaining to case assignment in United Kingdom Supreme Court, High Court of Australia, Supreme Court of Canada and the practice in United States Supreme Court. The practices and function of each Court are different which has been evolved by time looking to particular background and set of facts. The practice of a Court ripens into a convention by passage of time and rich heritage of conventions are time tested which is followed by different Courts. The conventions and practice of the Supreme Court are time tested which practice and conventions of this Court have ripened with time which need not to be tinkered with or imitated from different international practices of different Courts. As noted above, the law laid down by this Court is that; the power of framing roster which inheres in the Chief Justice has constitutional and statutory backing and by convention it is treated as prerogative of the Chief Justice. We, thus, cannot import the international practices in the constitutional and statutory scheme of

this Court.

39. Much emphasis is laid down by the learned counsel for the petitioner that the procedure and manner of allocation of cases and formulation of Benches should be one which is accessible to public and there should be objective criteria of exercise of the power by the Chief Justice. Manner and procedure for exercising the power should be put in public domain to allay any kind of misapprehension and to instill confidence in public in general. We have already noticed above that the manner and procedure for transaction of Court work is elaborately dealt with Supreme Court Rules, 2013.

40. Further, handbook on practice and procedure and office procedure also laid down sufficient guidelines and elaboration of the procedure which is to be followed in this Court. Thus, for transaction of business of the Court, there are elaborate rules and procedure and it cannot be said that procedure and practice of the Court is unguided and without any criteria.

41. We are, however, not unconscious of the fact that

working of any system is a continuous process and each and every organisation endeavours to improve the working of its system suitable to circumstances and the need. Improvement of functioning is always a goal of every system and all organisations endeavour to improve the system, which is always a welcome steps. The Supreme Court cannot be an exception to above objective and goal.

42. Before we close, we remind ourselves of following weighty words of ***Venkataramiah, J.*** in ***Judges*****' *case:***

> "***1268.*** *.....We are made to realise that we are all mortals with all the human frailties and that only a few know in this world the truth behind the following statement of Michel De Montaigne: "Were I not to follow the straight road for its straightness, I should follow it for having found by experience that in the end it is commonly the happiest and the most useful track". .....But if the judiciary should be really independent something more is necessary and that we have to seek in the Judge himself and not outside. A Judge should be independent of himself. A Judge is a human being who is a bundle of passions and prejudices,*

likes and dislikes, affection and ill will, hatred and contempt and fear and recklessness. In order to be a successful Judge these elements should be curbed and kept under restraint and that is possible only by education, training, continued practice and cultivation of a sense of humility and dedication to duty. These curbs can neither be bought in the market nor injected into human system by the written or unwritten laws. If these things are there even if any of the protective measures provided by the Constitution and the laws go the independence of the judiciary will not suffer. But with all these measures being there still a Judge may not be independent. It is the inner strength of Judges alone that can save the judiciary. The life of a Judge does not really call for great acts of self-sacrifice; but it does insist upon small acts of self-denial almost every day. The following sloka explains the true traits of men with discretion which all Judges should possess:

निन्दन्तु नीतिनिपुणा यदि वा स्तुवन्तु
लक्ष्मीः समाविशतु गच्छतु वा यथेष्टम
अद्यैव वा मरणमस्तु युगान्तरे वा
न्याययात्पथः प्रविचलन्ति पदं न धीराः

[Let men trained in ethics or morality, insult or praise; let lakshmi (wealth) accumulate or vanish as she likes; let death come today itself or at the end of a yuga (millennium), men with discretion will not deflect from the path of rectitude.)"

43. The writ petition is disposed of with the observations as made above.

.....J.

NEW DELHI, **(ASHOK BHUSHAN)**
JULY 06, 2018.