

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION

WRIT PETITION (CRL.) NO.169 OF 2017

Campaign for Judicial Accountability
and Reforms

Petitioner(s)

Versus

Union of India and Another

Respondent(s)

O R D E R

Today when the matter was listed before a two-Judge Bench, comprising of Hon'ble Mr. Justice A.K. Sikri and Hon'ble Mr. Justice Ashok Bhushan, the following order was passed:-

"Mr. Prashant Bhushan, learned counsel has brought to our notice order dated 09.11.2017 passed in W.P(Crl.) No.176/2017 referring the matter to the Constitution Bench. Let the matter be placed before Hon'ble the Chief Justice for passing appropriate orders for listing this matter.

Mr. R.S. Suri, senior advocate/President, Supreme Court Bar Association (SCBA) submits that SCBA also wants to get itself impleaded as a party respondent and render assistance. On an oral request of Mr. Suri, the prayer is allowed

and the SCBA is impleaded as a party respondent.”

After perusal of the aforesaid order, it was thought appropriate by the Chief Justice of India to constitute a Constitution Bench and, accordingly, the matter has been placed before us.

It is submitted by Mr. P.S. Narasimha, learned Additional Solicitor General, Mr. R.S. Suri, Mr. Ajit Kumar Sinha, Mr. R.P. Bhatt, Mr. Ashok Bhan, learned senior counsel, Mr. Gaurav Bhatia and Mr. Gopal Singh, learned counsel, along with other counsel that as per the judgment rendered by the three-Judge Bench in State of Rajasthan vs. Prakash Chand and Others (1998) 1 SCC 1, the Chief Justice of the High Court is the master of the roster and there is no justification not to treat the Chief Justice of India, who is the Chief Justice of the Apex Court, to have the same power. If the same principles are not followed, the institution cannot function. Our attention has also been drawn to Order VI Rule 2 of the Supreme Court Rules, 2013, which reads as follows:-

“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.”

In Prakash Chand (supra), the Court stated thus:-

"From the preceding discussion the following broad CONCLUSIONS emerge. This, of course, is not to be treated as a summary of our judgment and the conclusion should be read with the text of the judgment:

(1) That the administrative control of the High Court vests in the Chief Justice alone. On the judicial side, however, he is only the first amongst the equals.

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

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

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

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

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

Mr. Narasimha and Mr. Suri have also drawn our attention to the authority in Official Liquidator vs. Dayanand and Others (2008) 10 SCC 1, wherein it has been held as follows:-

“In the present case the Bench of two learned Judges has, in terms, doubted the correctness of a decision of a Bench of three learned Judges. They have, therefore, referred the matter directly to a Bench of five Judges. In our view, judicial discipline and propriety demands that a Bench of two learned Judges should follow a decision of a Bench of three learned Judges. But if a Bench of two learned Judges concludes that an earlier judgment of three learned Judges is so very incorrect that in no circumstances can it be followed, the proper course for it to adopt is to refer the matter before it to a Bench of three learned Judges setting out, as has been done here, the reasons why it could not agree with the earlier judgment. If, then, the Bench of three learned Judges also comes to the conclusion that the earlier judgment of a Bench of three learned Judges is incorrect, reference to a Bench of five learned Judges is justified.”

There can be no doubt that the Chief Justice of India is the first amongst the equals, but definitely, he exercises certain administrative powers and that is why in Prakash Chand (supra), it has been clearly stated that the administrative control of the High 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 (*supra*), the Chief Justice is the master of the roster and he alone has the prerogative to constitute the Benches of the Court and allocate cases to the Benches so constituted.

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.

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 (supra), which was 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.

In this context, Mr. Narasimha, learned Additional Solicitor General has drawn our attention to Article 145(2) and (3) of the Constitution. The said provisions read as under:-

"145. Rules of Court, etc.-

(1)

(2) Subject to the provisions of clause (2), rules made under this article may fix the minimum number of Judges who are to sit for any purpose, and may provide for the powers of single Judges and Division Courts.

(3) The minimum number of Judges who are to sit for the purpose of deciding any case involving a substantial question of law as to the interpretation of this Constitution or for the purpose of hearing any reference under Article 143 shall be five:

Provided that, where the Court hearing an appeal under any of the provisions of this chapter other than Article 132 consists of less than five Judges and in the course of the hearing of the appeal the Court is satisfied that the appeal involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the appeal, such Court shall refer the question for opinion to a Court constituted as required by this clause for the purpose of deciding any case involving such a question and shall on receipt of the opinion dispose of the appeal in conformity with such opinion."

The rules have been framed in that regard. True, the rules deal with reference, but the law laid down in Prakash Chand (supra) has to apply to the Supreme Court so that there will be smooth functioning of the Court and there is no chaos in the administration of justice dispensation system. If any such order has been passed by any Bench, that cannot hold the field as that will be running counter to the order passed by the Constitution Bench. Needless to say, no Judge can take up the matter on his own, unless allocated by the Chief Justice of India, as he is the master of the roster.

In view of the aforesaid, any order passed which is contrary to this order be treated as ineffective in law and not binding on the Chief Justice of India.

As far as the present writ petition is concerned, on merits, the matter be listed before the appropriate Bench to be allocated by the Chief Justice of India.

List the matter after two weeks.

.....CJI.
[Dipak Misra]

.....J.
[R.K. Agrawal]

.....J.
[Arun Mishra]

.....J.
[Amitava Roy]

.....J.
[A.M. Khanwilkar]

New Delhi
November 10, 2017.

ITEM NO.501

COURT NO.1

SECTION PIL-W

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

Writ Petition (Criminal) No.169/2017

CAMPAIGN FOR JUDICIAL ACCOUNTABILITY AND REFORMS Petitioner(s)

VERSUS

UNION OF INDIA & ANR.

Respondent(s)

Date : 10-11-2017 This petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE R.K. AGRAWAL
HON'BLE MR. JUSTICE ARUN MISHRA
HON'BLE MR. JUSTICE AMITAVA ROY
HON'BLE MR. JUSTICE A.M. KHANWILKAR

For Petitioner(s)

Mr. Prashant Bhushan, AOR

For Respondent(s)

Mr. P.S. Narasimha, ASG

Mr. R.S. Suri, Sr. Adv.
Mr. Ajit Sinha, Sr. Adv.
Mr. P.P. Khuran, Sr. Adv.
Mr. Ashok Bhan, Sr. Adv.
Mr. Aman Sinha, Sr. Adv.
Mr. Anukul Pradhan, Sr. Adv.
Mr. Gaurav Bhatia, Adv.
Mr. Rahul Kaushik, Adv.
Mr. Meenesh Dubey, Adv.
Ms. Divya Roy, Adv.
Mr. Umesh Babu C., Adv.
Ms. Purnima Johari, Adv.

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

In terms of the signed reportable order, let the matter be listed before the appropriate Bench to be allocated by the Chief Justice of India.

(Chetan Kumar)
Court Master

(H.S. Parasher)
Assistant Registrar

(Signed reportable order is placed on the file)