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Author Name: Rutambhara Nayak, RGSOIPL, IIT Kharagpur

**ANALYSIS - ANNA MATHEWS v. SUPREME COURT OF INDIA
(2023) 5 SCC 661**

INTRODUCTION -

Judicial appointments in India have long been a subject of public scrutiny and debate. The process of selecting judges for the higher judiciary, particularly through the collegium system, has been a source of both admiration and contention. This system, which vests significant authority in the hands of the judiciary itself, has often been criticized for its lack of transparency and accountability. Controversies surrounding the appointments, allegations of favoritism, and questions about the role of the executive and judiciary in the selection process have ignited passionate discussions within legal and political circles. This case comment deals with one such appointment which ignited a lot of debate and discussions in the recent past.

The petition challenging the appointment of Lekshmana Chandra Victoria Gowri as an additional judge of the Madras High Court has been dismissed by the Supreme Court. This coincided with Victoria Gowri's swearing-in as a judge of the Madras High Court, along with four others, in Chennai. The members of the Madras High Court Bar Council expressed their objections to the collegium's recommendation in individual letters directed to the President of India Draupadi Murmu and the Supreme Court collegium. They argued that the appointment of the recommended candidate would have a detrimental effect on the autonomy of the judiciary. The demand has been made for the Collegium to retract its recommendation, while also seeking interim orders to prevent Gowri from taking the oath. Additionally, it is requested that the President return the file recommending Gowri's appointment and seek clarification regarding the recommendation of an individual who has been involved in spreading hate speech against Indian minorities to a high constitutional position as a high court judge. The assertion has been made that she has exhibited pronounced bias in her public comments towards religious minority groups.

Consequently, it is argued that she should be deemed ineligible for inclusion on the suggested list, as her ability to administer justice impartially and without prejudice may be compromised. It has been asserted that the Supreme Court or the Madras High Court collegia did not have access to all pertinent papers pertaining to Gowri prior to her recommendation for the position of a High Court judge. Consequently, the petitioners formally appealed to the collegium, urging them to reevaluate their first recommendation.

During the proceedings, a bench comprising Justices Sanjiv Khanna and B R Gavai acknowledged that it would be inappropriate to assume that the Collegium was unaware of Victoria Gowri's political affiliations.

BACKGROUND -

The chain of events - The Supreme Court Collegium proposed the promotion of advocate Gowri (at that time) as a judge of the Madras HC on January 17. On February 1 and February 2, a collective of 21 lawyers sent a formal message to the President and the Collegium, alleging that she had engaged in hate speech on social media. The petitions claimed that Justice Gowri had engaged in a “shocking and distasteful diatribe” during two interviews on YouTube in 2018. They stated that her interviews were filled with communal statements. During an interview titled ‘More Threat to National Security & Peace? Jihad or a Christian missionary?’, here are the answers; According to Victoria Gowri's statement on February 27, 2018, she allegedly claimed that “Islam represents green terror, while Christianity represents white terror.” She asserted, “Christian groups pose a greater threat than Islamic groups.” Both are equally perilous in the context of love jihad. In a separate interview titled ‘Cultural genocide by Christian Missionaries in Bharat - Victoria Gowri’ posted on June 5, 2018, Gowri denounced the “sinister actions of the Roman Catholics” and asserted that Bharatanatyam should not be performed to Christian songs. The correspondence also references an article titled ‘Aggressive baptising destroying social harmony’ published on October 1, 2012 in the Organiser. In this article, Gowri expressed concern over the lack of action to prevent coerced and alluring conversions, as well as the prevention of Christians from instigating communal conflicts. Additionally, Gowri highlighted the ongoing struggle of marginalized Hindus against the powerful Christian diocese over the past fifty years. However, the current situation has become uncontrollable.

They sought an interim order like in the case of *Sri Kumar Padma Prasad versus Union of India*¹ in 1992 when the apex court had restrained a judicial appointee to the Gauhati High Court from taking oath and assuming office as a judge.

Chief Justice Chandrachud orally stated in open court that the Collegium became aware of these “developments” after the recommendation was formulated. The case, which was originally scheduled for February 10, was rescheduled to February 7 due to Law Minister Kiren Rijiju's tweet announcing the appointment of the judge, among others.

The inauguration ceremony was planned for February 7. On the same day, a Bench consisting of Justices Sanjiv Khanna and B.R. Gavai dismissed the petitions in a 25-minute hearing, while the lawyers representing the petitioners were called to Chief Justice Chandrachud's court. The publication of a nine-page order on February 10 concluded that conducting a judicial review of a Collegium recommendation would be in violation of the law and would involve assessing and replacing the Collegium's decision with an individual or personal opinion on the suitability and merits of the person.

Issue - Legal issue raised here is of the scope and ambit of judicial review in relation to the appointment of judges to the High Courts as per Article 217 of the Constitution of India.

Coram - A division bench comprising Justice Sanjiv Khanna and Justice B.R. Gavai.

PRESENTATION OF COURT'S OPINION -

The bench has started the order by stating that the legal issue in this case is well settled and not *res integra*, that is not an untouched matter but previously deliberated upon and decided accordingly.

The Supreme Court has determined that the appointment of a judge is a responsibility of the President of India, falling under the executive branch. This appointment process is guided by Article 217(1) of the constitution, which outlines the requirement for consultation. The qualifications required for someone to be appointed as a judge of the High Court are determined by the criteria outlined in Article 217(2). Any issue related to this matter would be subject to judicial review. Nevertheless, the issue of whether a person is suitable to be appointed as a judge is not subject to judicial review.

¹ (1992) 2 SCC 428

The court refers to *Mahesh Ch. Gupta v. Union of India and others*² to come to this aforementioned interpretation of Article 217.

The Supreme Court addressed the distinction between “eligibility” and “suitability” criteria, as discussed in the *Mahesh Gupta case*³, regarding the appointment of judges. According to Article 217(2), eligibility is determined by the qualifications mentioned in the Constitution. Therefore, when eligibility is questioned, it falls under the scope of judicial review. Nevertheless, the matter of suitability, which pertains to the qualifications of the individual being appointed, is not subject to judicial review because Article 217(1) outlines the procedure that assesses the suitability of the appointed judge based on factors such as character, integrity, competence, knowledge, and similar criteria. Similarly, the court rejected the petitioners' request to broaden the application of the principle established in the case of *Shri Kumar Padma Prasad v. Union of India and Others*⁴. The court clarified that this case specifically dealt with the eligibility of an individual and cannot be extended to include the judicial review of a candidate's suitability or merits.

Further stressing on the limited scope of judicial review in matters of appointment of judges, the court has referred to the judgment in *M. Manohar Reddy and Another v. Union of India and Others*⁵ restricting it to eligibility and not the suitability criteria.

The court also relied on *Supreme Court Advocates-on-Record Association and Others v. Union of India*⁶, and *Special Reference No. 1 of 1998, Re*⁷ to explain further that judicial review applies when there is a ‘lack of eligibility’ or ‘lack of effective consultation’. The bench elucidated what ‘lack of effective consultation’ means by citing para 480,481 and 482 of the judgment in *Supreme Court Advocates-on-Record Association and Others v. Union of India*⁸.

The bench opined that the political backgrounds of a candidate, even though a relevant consideration has not been an absolute bar to the appointment of an otherwise suitable person by referring to *N. Kannadasan v. Ajoy Khose and Others*⁹.

The court dismissed the claim that the facts were not acknowledged and taken into account by the Collegium, despite the fact that the petitioners have included a

² (2009) 8 SCC 273

³ *Id.*

⁴ 1992 AIR 1213

⁵ (2013) 3 SCC 99

⁶ (1993) 4 SCC 441

⁷ (1998) 7 SCC 739

⁸ *Supra*

⁹ (2009) 7 SCC 1

recommendation made on February 1, 2023. However, the Collegium has not retracted or revoked their decision.

The Supreme Court also ruled that it does not have the authority to issue a writ of certiorari or mandamus to invalidate the recommendation or request for reconsideration. This is because doing so would involve assessing and replacing the decision of the Collegium, which is outside the Court's designated jurisdiction.

The court also emphasized that LC Victoria Gowri's appointment in the High Court of Madras is as an Additional Judge, pending confirmation. It highlighted that she is required to fulfill the responsibilities imposed on her by Article 51A of the Constitution of India. In addition, the evaluation of a judge's confirmation takes into account not only their behavior and the decisions they make, but also the daily assessment by lawyers, litigants, and the public. This assessment is possible because courts are open and judges provide written explanations for their decisions.

ANALYSIS -

The order delivered by the bench in the particular case does not appear to have any problem but what is to be critically analysed, is the implication it has on the society and future cases.

The order states that the High Court and the Supreme Court of India have a Collegium system in place for the recommendation and selection of judges. Following a recommendation for promotion from the High Court Collegium, the intelligence agencies carry out a thorough investigation, while the Supreme Court Collegium, comprising the Chief Justice and the two most senior Judges, evaluates the recommendation, takes into account feedback from the government, and considers the opinions of Judges who are acquainted with the High Court. The Supreme Court Collegium makes the ultimate decision after taking into account various inputs and communicates it to the government. This brings to our notice of the lack of transparency in the dissemination of information or relevant material for evaluation. The structural opacity of the collegium is a difficulty that leads to cases as the present one. The scope of judicial review is limited and has been rightly applied by the division bench in deciding the matter but the fact that 'suitability' does not come under the purview of judicial review means that even if the suitability criteria was not duly evaluated, there is no legal recourse for it. What needs to be understood is that, the final call rests with the government in appointment of judges. Therefore, the

question arises that, the debate over the appointment that has unleashed, whether it points fingers to the judiciary or executive of the country.

Secondly, the petitioners claimed withholding of the recommendation by producing before the court, materials like interviews and articles published by the candidate in question and their claims were concerning hate speeches. What it appears to the author is that, either the petitioners did not put forward their concerns effectively or the court has misread the claims to be questioning the 'political affiliations' of the candidate. Furthermore, the content of the consultation is out of the scope and ambit of the court as stated by various precedents of the Supreme Court, hence the credibility of such claims cannot be determined - making it another impeding factor to deliver justice.

On the other hand, what cannot be ignored is the reference made to *Supreme Court Advocates-on-Record Association and Others* while deciding the matter. The judgment states *"This is also in accord with the public interest of excluding these appointments and transfers from litigative debate, to avoid any erosion in the credibility of the decisions, and to ensure a free and frank expression of honest opinion by all the constitutional functionaries, which is essential for effective consultation and for taking the right decision."* It further indicates towards the interconnectedness of judiciary's administrative role and judicial role. While deciding matters related to appointment of judges, like the present one, going against the recommendation of the collegium and setting it aside would mean setting a wrong precedent. Since, the judiciary is the epitome of ensuring democratic discourse of matters, the difficulties arising out of situations like these which might have heavy social and political implication, need to be addressed in a subtle manner.

Furthermore, the bench's own rationale indicates that Article 51A of the Constitution imposes a duty on every citizen, and particularly on every judge, to foster unity and a sense of shared brotherhood that goes beyond religious, linguistic, regional, or sectional differences. The court also affirms that the principle of secularism and the dignity of every individual, irrespective of their religion, caste, or creed, form the basis of the Rule of Law and equal protection under the law. However, the bench concludes that these values along with the conduct and judgments delivered is taken into consideration while evaluating the confirmation hence, indicating towards a future opportunity which would be useful in deciding the merits of the claims made by petitioners as well as the merits of the particular appointment. But again, this is not for the court to decide but falls under the administrative role of courts.

CONCLUSION

Transparency is crucial in preventing confusion. The lack of clarity surrounding the appointment of L. Victoria Gowri as an additional judge of the Madras High Court raises concerns regarding the extent of transparency in the process. The extent to which a lack of transparency contributed to the controversy is still uncertain. The collegium's selection has prompted inquiries regarding their knowledge of the allegations and its relevance. Nevertheless, the prompt endorsement of Ms. Gowri's appointment by the Centre, an organization renowned for its meticulous examination of collegium recommendations, caused surprise and suspicion. Ms. Gowri's appointment as an additional judge at the Madras High Court was notable because it happened at the same time that a Supreme Court bench was reviewing the petitions challenging her appointment. The expedited approval process further heightened practical concerns. In terms of structure, the Indian collegium differs from the judicial systems in the United States of America or South Africa by not revealing the names of candidates being considered for judgeships. The purpose of checks and balances in any process is to maintain the autonomy of the judicial system. Nevertheless, the current mechanisms have been insufficient in completely eradicating perplexity and humiliation.

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