IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31st DAY OF JANUARY, 2020

PRESENT

THE HON'BLE SHRI ABHAY S. OKA, CHIEF JUSTICE

AND

THE HON'BLE SHRI JUSTICE MOHAMMAD NAWAZ

WRIT PETITION NO. 6380 OF 2019 (GM-RES-PIL)
C/W
W.P. Nos. 5368/2019 (GM-RES), 35595/2019 (GM-RES-PIL)
and 7388/2019 (GM-RES)

Between:

In W.P. No. 6380 of 2019

Sri. T.N. Raghupathy,
S/o late Narayana Udupa,
Aged 69 years,
R/at No. 54, 1st Floor,
10th Main Road, Binny Layout,
Vijayanagar, Bengaluru – 560 040 . . . Petitioner

(By Sri T.N. Raghupathy, Petitioner
as party in person)

1. The High Court of Karnataka
   Through its Registrar General,
   High Court Buildings,
   Dr. B.R. Ambedkar Veedhi,
   Bengaluru – 560001.

2. The Committee for Designation of
   Senior Advocates
   of High Court of Karnataka
   Through its Secretary
   High Court Buildings,

Dr.B.R. Ambedkar Veedhi,
Bengaluru – 560001.

3. Sri R.V. Subramanya Naik
(RVS Naik), Senior Advocate,
Aged about 64 years,
No. 5, 3rd Main Road,
N.R. Colony, Bengaluru – 560019.

4. Sri Gurunath Gangadhar
Rudramuni Sharma,
Senior Advocate,
Aged about 58 years,
No. 357, 4th Main, 14th Cross,
Upper Palace Orchard,
Sadashivanagar,
Bengaluru – 560 080.

5. Sri R.V.Prasad, Senior Advocate,
Aged about 58 years,
No. 526, 'Aditya House'
4th Cross, 2nd Block,
R.T.Nagar, Bengaluru – 560 032.

6. Sri Hashmath Pasha,
Senior Advocate,
Aged about 58 years,
No. 48, Risaldar Road,
Seshadripuram, S.C. Road,
Bengaluru – 560 020.

7. Smt. S.Susheela,
Senior Advocate,
Aged about 57 years,
No. 59, F3, Nisarga, 9th Main,
18th Cross, Malleshwaram,
Bengaluru – 560 003.

8. Sri Gurudas Shyamrao Kannur,
Senior Advocate,
Aged about 50 years, No.57,

2nd Parallel road to 1st Main Road,
RMV II Stage, Bengaluru-560 094.

9. Sri Kuloor Arvind Kamath,
Senior Advocate,
Aged about 47 years,
No. 340, 'Kailas',
4th Cross, GKVK Layout,
Jakkur, Bengaluru-560 064.

10. Sri K.N. Phanindra,
Senior Advocate,
Aged about 47 years,
No.37/3, 'Kalyan',
Cunningham Cross Road,
Bengaluru – 560 052.

11. Sri G.Shivadass,
Senior Advocate,
Aged about 47 years,
No.3A, SPL Enderley,
26 Off Cubbon Road,
Bengaluru – 560 001.

12. Sri Arun Kumar K
Senior Advocate,
Aged about 47 years, No.82,
N.R.Layout, FCI Road,
Dooravaninagar,
Bengaluru-560 016.

13. Sri Srinivasa Raghavan. V.
Senior Advocate,
Aged about 44 years, No.161,
Judges Colony, 3rd F Cross,
III Stage, II Block, West of Chord Road,
Bengaluru – 560 079.

14. Sri A.S. Ponnanna,
Senior Advocate,
Aged about 44 years, No. 151,

1st Main Road, MLA Layout,
R.T.Nagar, Bengaluru-560 032.

15. Sri Sandesh J. Chouta,
Senior Advocate,
Aged about 44 years,
No. 385, 11th Cross,
5th Main, RMV 2nd Stage,
Bengaluru – 560 094.

16. Smt. Lakshmy Iyengar,
Senior Advocate,
Aged about 43 years, No. M-25,
25th Main, 5th Cross,
J.P. Nagar I Phase,
Bengaluru – 560 068.

17. Sri M. Nagaprasanna,
Senior Advocate,
Aged about 45 years, No. 1689,
15th Main, 31st Cross,
Banashankari 2nd Stage,
Bengaluru-560 070.

18. Smt. Jayna Kothari,
Senior Advocate,
Aged about 42 years, No. 899,
7th Main, 4th Cross,
HAL 2nd Stage, Indiranagar,
Bengaluru-560 008.

19. Sri Shankar A,
Senior Advocate,
Age not known, No. 19,
1st Floor, SNS Plaza,
Kumarakrupa Road,
Bengaluru – 560 001.

20. Union of India,
By its Secretary,
Ministry of law and Justice,

Shastri Bhavan, A-Wing,
New Delhi – 100 001. ..Respondents

(By Sri. S.S.Naganandа, Senior Counsel for
Sri. Sriranga, Advocate for respondents 1 & 2;

Sri. N.S.Prasad, Advocate for R3
Smt. Akkamahadevi Hiremath, Advocate for R4;

Sri. D.N.Nanjunda Reddy, Senior Counsel
for Sri.Tejas. N Advocate for R6;

Sri. Somanatha H, Advocate for R7

Sri. R.C.Nagaraj, Advocate for R8;

Sri. D.L.N. Rao, Senior Counsel for
Sri. S. Arun Prashant Popat, Advocate for R9

Sri. D.N. Nanjunda Reddy, Senior Counsel
For Sri. Bipin Hegde, Advocate for R10;

Smt. Akshaya B.M. Advocate for R11;

Sri. K.G. Raghavan, Senior Counsel for
Sri. B.N. Prakash Advocate for R12;

Sri. Ashok Haranahalli, Senior Counsel for
Sri. Pradeep Naik, Advocate for R13;

Prof. Ravivarma Kumar, Senior Counsel for
Smt. Leela P Devadiga, Advocate for R14;

Sri. Madhusudan Naik, Senior Counsel for
Sri. Ismail M Musba, Advocate for R15;

Sri. H.N. Narayan, Senior Counsel for
Sri. Gauthamaditya S, Advocate for R16;

Sri. K. Puttegowda, Advocate for R17;

Sri. Rohan Kothari, Advocate for R18;

Sri. D.N.Nanjunda Reddy, Senior Counsel
For Sri. Reuben Jacob, Advocate for R19;

Sri. C.Shashikantha, Additional Solicitor General for R20;

Respondent 5 Served

This writ petition is filed under Articles-226 & 227 of the Constitution of India, praying to direct and declare that the Notification dated 16.11.2018 issued by the R-1 vide Annexure-A as illegal and quash the same, direct the R-1 to Re-do the entire exercise of assessment by the Committee and taking decision by the Full Court in regard to designation of Advocates in keeping with the statutory mandate of Section 16(2) of Advocate's Act, and to direct the R-20 herein, to frame rules under Section 16(2) of the Advocate Act, 1961, in strict conformity with the object, purpose and wordings of the Act.

In W.P. No. 5368 of 2019

Between:

1. Shri Puttige R. Ramesh,
Son of late Raghavendra Shastri,
Aged 66 years, Advocate,
N.7, Gurukrupa, 5th Main,
5th Block, Jayanagar,
Bengaluru-560 041.

2. Shri Bhat Ganesh Krishna,
Son of Sri Krishna Bhat,
Aged about 65 years,
Advocate, No. 1532, 'B' Block,
Sahakaranagar, Bengaluru – 560 092.

3. Shri M.H. Sawkar,
Aged about 70 years,
Advocate, No. 4,
Yeshaswi Nilaya,
West Park Road, Kumarapark East,
Bengaluru-560001.

4. Shri B.L. Acharya,
Son of Sri.B.V. Acharya,
Aged about 56 years, Advocate,
No. 42, 5th Main,
Jayamahal Extension,
Bengaluru – 560 046.

. . . Petitioners

(By Sri.M.B.Naragund, Senior Counsel
For Sri. Sagar B.B. Advocate for petitioner)

And:

1. High Court of Karnataka
Through its Registrar General
High Court Buildings,
Dr. B.R. Ambedkar Veedhi,
Bengaluru – 560001.

2. The Committee for Designation of
Senior Advocates of High Court of Karnataka
Through its Secretary
High Court Buildings,
Dr.B.R. Ambedkar Veedhi,
Bengaluru – 560001.

3. Sri R.V. Subramanya Naik
(RVS Naik), Senior Advocate,
Aged about 64 years,
No.5, 3rd Main Road,
N.R. Colony, Bengaluru-560019.

4. Sri Gurunath Gangadhar
   Rudramuni Sharma,
   Senior Advocate,
   Aged about 58 years,
   No. 357, 4th Main, 14th Cross,
   Upper Palace Orchard,
   Sadashivanagar,
   Bengaluru – 560 080.

5. Sri. R.V. Prasad, Senior Advocate,
   Aged about 58 years,
   No.526, ‘Aditya House’
   4th Cross, 2nd Block,
   R.T.Nagar, Bengaluru- 560 032.

6. Sri Hashmath Pasha,
   Senior Advocate,
   Aged about 58 years,
   No. 48, Risaldar Roda,
   Seshadripuram, S.C. Road,
   Bengaluru – 560 020.

7. Smt. S.Susheela, Senior Advocate,
   Aged about 57 years,
   No. 59, F3, Nisarga, 9th Main,
   18th Cross, Malleshwaram,
   Bengaluru-560 003.

8. Sri Gurudas Shyamrao Kannur,
   Senior Advocate,
   Aged about 50 years, No. 57,
   2nd Parallel Road to 1st Main Road,
   RMV II Stage,
   Bengaluru – 560 094.

9. Sri Kuloor Arvind Kamath,
   Senior Advocate,
   Aged about 47 years,
   No. 340, ‘Kailas’,
   4th Cross, GKVK Layout,
   Jakkur, Bengaluru – 560 064.

10. Sri K.N.Phanindra,
    Senior Advocate,
    Aged about 47 years,
    No.37/3, 'Kalyan',
    Cunningham Cross Road,
    Bengaluru – 560 052.

11. Sri G.Shivadass,
    Senior Advocate,
    Aged about 47 years,
    No.3A, SPL Enderley,
    26 Off Cubbon Road,
    Bengaluru – 560 001.

12. Sri Arun Kumar K
    Senior Advocate,
    Aged about 47 years, No. 82,
    N.R. Layout, FCI Road,
    Dooravaninagar,
    Bengaluru – 560 016.

13. Sri Srinivasa Raghavan. V.
    Senior Advocate,
    Aged about 44 years, No.161,
    Judges Colony, 3rd F Cross,
    III Stage, II Block, West of Chord Road,
    Bengaluru – 560 079.

14. Sri A.S. Ponnanna,
    Senior Advocate,
    Aged about 44 years, No. 151,
    1st Main Road, MLA Layout,
    R.T.Nagar, Bengaluru-560 032.

15. Sri. Sandesh J. Chouta,
    Senior Advocate,
    Aged about 44 years,
    No. 385, 11th Cross,
    5th Main, RMV 2nd Stage,
    Bengaluru – 560 094.

16. Smt Lakshmy Iyengar,
Senior Advocate,
Aged about 43 years, No. M-25,
25th Main, 5th Cross,
J.P.Nagar I Phase,
Bengaluru – 560 068.

17. Sri M.Nagaprasanna,
Senior Advocate,
Aged about 45 years, No. 1689,
15th Main, 31st Cross,
Banashankari 2nd Stage,
Bengaluru – 560 070.

18. Smt. Jayna Kothari,
Senior Advocate,
Aged about 42 years, No. 899,
7th Main, 4th Cross,
HAL 2nd Stage, Indiranagar,
Bengaluru – 560 008.

19. Sri Shankar A,
Senior Advocate,
Age not known, No. 19,
1st Floor, SNS Plaza,
Kumarakrupa Road,
Bengaluru – 560 001.

Respondents

(By Sri. S.S.Nagananda, Senior Counsel for
Sri. Sriranga, Advocate for just Law for R1&R2;

Sri. N.S. Prasad, Advocate for R3
Smt. Akkamahadevi Hiremath, Advocate for R4;

Sri. D.N. Nanjunda Reddy, Senior Counsel
For Sri. Tejas, N Advocate for R6;

Sri. Somanatha H, Advocate for R7

Sri. R.C. Nagaraj, Advocate for R8;

Sri. D.L.N. Rao, Senior Counsel for
Sri. S. Arun Prashant Popat, Advocate for R9;

Sri. D.N. Nanjunda Reddy, Senior Counsel
For Sri. Bipin Hegde, Advocate for R10;

Smt. Akshaya B.M. Advocate for R11;

Sri. K.G.Rahavan, Senior Counsel for
Sri. B.N.Prakash Advocate for R12;

Sri. Ashok Haranahalli, Senior Counsel for
Sri. Pradeep Naik, Advocate for R13;

Prof. Ravivarma Kumar, Senior Counsel for
Smt. Leela P Devadiga, Advocate for R14;

Sri. Madhusudan Naik, Senior Counsel for
Sri. Ismail M Musba, Advocate for R15;

Sri. H.N. Narayan, Senior Counsel for
Sri. Gauthamaditya S, Advocate for R16;

Sri. K. Puttegowda, Advocate for R17;

Sri. Rohan Kothari, Advocate for R18;

Sri. D.N.Nanjunda Reddy, Senior Counsel
For Sri. Reuben Jacob, Advocate for R19;

This writ petition is filed under Articles-226 & 227 of the Constitution of India, praying to call for the entire records pertaining to the proceedings of the Committee for designation of Senior Advocates of the High Court of Karnataka and the Full Court of the High Court of Karnataka Pertaining to designation of Senior Advocates starting from the Notification dated 7.8.2018

and culminating with the issuance of Notification dated 16.11.2018 and any other relevant records in connection therewith, quash the Notification dated 16.11.2018 issued by the R-1 whereby 17 Advocates i.e. R-3 to 19 herein are been designated as Senior Advocates which is produced at Annexure-A, issue a Writ of mandamus to the respondent No. 1 and 2 to re-do the exercise of selection and designation of Senior Advocates from among the applicants who had applied for such designation pursuant to the Notification dated 7.8.2018 issued by the High Court of Karnataka at Annexure-D calling for applications from aspirants for designation as Senior Advocates strictly in accordance with the norms laid down by this Hon'ble Court in the decision rendered in Indira Jaising Vs. Supreme Court of India reported in (2017) 9 SCC 766 and also strictly in accordance with the rules framed by the High Court of Karnataka governing the designation of Senior Advocates, namely, High Court of Karnataka (Designation of Senior Advocates), Rules, 2018.

In W.P. No. 35595/ 2019 (PLI)

Between:

Sri. M. Veerabhadraiah,
S/o. Late. Mallaiah,
Advocate, EN. No. 453/KAR/1986
Aged about 63 years,
R/at No:291, 5th Cross, 13th Main,
Gokula 1st Stage & 1st Phase,
Bengaluru-560054.

. . . Petitioner

(By Sri. N.Devadas Senior Counsel, for
Smt. Anasuya Devi K.S. Advocate for petitioner)

And

1. The Registrar General,
   High Court of Karnataka,
   Bengaluru – 560001.

2. The Permanent Secretariat for
   Designation of Senior Advocates,
   By its Secretary,
   High Court of Karnataka,
   Bengaluru – 560001.

3. Sri. R.V. Subramanya Naik (RVS Naik)
   S/o not known
   Aged about 64 years,
   Senior Advocate,
   EN. No. KAR/4/1975
   No.5, 3rd Main Road,
   N.R. Colony, Bengaluru – 560019.

4. Sri. Gurumath Gangadhar Rudramuni Sharma
   S/o not known
   Aged about 58 years,
   Senior Advocate,
   EN. No. KAR/281/1983
   No.357, 4th Main, 14th Cross Road,
   Upper Palace Orchard, Sadashivanagar,
   Bengaluru – 560080.

5. Sri. R.V. Prasad,
   S/o not known
   Aged about 58 years
   Senior Advocate,
   EN. No. KAR/129/1984
   No. 526, 'Aditya House'
   4th Cross, 2nd Block, R.T. Nagar,
   Bengaluru – 560032.

6. Sri. Hashmath Pasha,
   S/o not known

Aged about 58 years
Senior Advocate,
EN No. KAR/258/1984
No. 48, Risaldar Road, Seshadripuram,
S.C. Road, Bengaluru-560020.

7. Smt. S. Susheela,
H/o not known
Aged about 57 years
Senior Advocate,
EN. No. KAR/220/1986
No. 59, F3, 'Nisarga'
9th Main, 18th Cross, Malleshwaram,
Bengaluru-560055.

8. Sri. Gurudas Shyamrao Kannur,
S/o not known
Aged about 50 years
Senior Advocate,
EN. No. KAR/835/1990
No.57, 2nd Parallel road to
1st Main Road, RMV II Stage,
Bengaluru-560094.

9. Sri. Kuloor Arvind Kamath,
S/o not known
Aged about 47 years
Senior Advocate,
EN. No. KAR/539/1993
No. 340, 'Kailas'
4th Cross, GKVK Layout, Jakkur,
Bengaluru-560064.

10. Sri. K.N. Phanindra,
S/o not known
Aged about 47 years
Senior Advocate,
EN. No. KAR/1059/1993
No.37/3, 'Kalyan'
Cunningham Cross Road,
Bengaluru-560052.

11. Sri. G.Shivadass,
S/o not known
Aged about 47 years
Senior Advocate,
EN. No. KAR/340-B/1994
No.3A, ‘SPL Enderley’
26 Off: Cubbon Road,
Bengaluru – 560001.

12. Sri. Arun Kumar. K.
S/o not known
Aged about 44 years
Senior Advocate,
EN. No. KAR/713/1994
No.82, N.R. Layout,
FCI Road, Doorvani Nagar,
Bengaluru-560016.

13. Sri. Srinivasa Raghavan. V.
S/o not known
Aged about 44 years
Senior Advocate,
EN. No. KAR/324/1997
No.161, Judges Colony,
3rd ‘F’ Cross, III Stage, II Block,
West of Chord Road,
Bengaluru-560079.

14. Sri. A.S. Ponnanna,
S/o not known
Aged about 44 years
Senior Advocate,
EN. No. KAR/1285/1998
No. 151, 1st Main Road,
MLA Layout, R.T. Nagar,
Bengaluru-560032.

15. Sri. Sandesh. J. Chouta,
S/o not known
Aged about 44 years

Senior Advocate,
EN. No. KAR/503A/1997
No.385, 11th Cross, 5th Main,
RMV II Stage, Bengaluru-560094.

16. Smt. Lakshmy Iyengar,
H/o not known
Aged about 43 years,
Senior Advocate,
EN. No. KAR/150/1999
No. M-25, 25th Main,
5th Cross, J.P. Nagar 1st Phase,
Bengaluru-560078.

17. Sri. M. Nagaprasanna,
S/o not known
Aged about 45 years
Senior Advocate,
EN. No. KAR/570/1999
No. 1689, 15th Main,
31st Cross, B.S.K. II Stage,
Bengaluru-560070.

18. Smt. Jayna Kothari,
H/o not known
Aged about 42 years
Senior Advocate,
EN. No. KAR/4196/1999
No. 899, 7th Main,
4th Cross, HAL II Stage, Indiranagar,
Bengaluru-560008.

19. Sri. Shankar. A.
S/o not known
Aged about 64 years
Senior Advocate, EN. No. KAR/2715/2002
No.19, 1st Floor, SNS Plaza,
Kumarapark Road, Bengaluru – 560001.

. . . Respondents

(By Sri.S.S.Nagananda, Senior Counsel for

Sri. Sriranga, Advocate for just Law for R1&R2;
Sri. N.S. Prasad, Advocate for R3;

Smt. Akkamahadevi Hiremath, Advocate for R4;

Sri. D.N. Nanjunda Reddy, Senior Counsel
For Sri. Tejas. N Advocate for R6;

Sri. R.C. Nagaraj, Advocate for R8;

Sri. D.L.N. Rao, Senior Counsel for
Sri. Nikit Bala, Advocate for R9;

Sri. Rohan Kothari, Advocate for R18)

This writ petition is filed under Articles-226 & 227 of the Constitution of India, praying to declare that Rules 5(1) and 6(7) of the High Court of Karnataka (Designation of Senior Advocates) Rules, 2018 as contrary and inconsistent with Section 16(2) of the Advocates Act. 1961 as per Annexure-D; quash the Notification dated 16.11.2018 as per Annexure-H issued by R-1 Registrar General of this Hon'ble Court; direct R-1 to Re-do the process strictly in accordance with the guidelines laid down by the Hon'ble Apex Court in Indira Jaising's case reported in (2017) 9 SCC 766 and keeping in view of Section 16(2) of the Advocates Act, 1961.

In W.P. No. 7388/ 2019

Between:

G.R.Mohan, aged 63 years,
Advocate by Profession
No. 328, 1st 'N' Block, 19th 'E' Main Road,
Rajajinagar, Bengaluru – 560 010.
(Party in person)

…Petitioner

(By Sri. G.R. Mohan, Petitioner appearing as
Party in Person)

And

1. The High Court of Karnataka,
   Bengaluru – 560001
   Through Registrar General

2. The Secretary
   Permanent Secretariat Section
   High Court of Karnataka
   Bengaluru – 560001.

..Respondents

(By Sri. S.S. Nagananda, Senior Counsel for
Sri. Sriranga, Advocate for Just Law for R1 & R2)

This writ petition is filed under Articles-226 & 227 of the Constitution of India, praying to direct the respondents to re-assess the Petitioner's case in the absence of any rule in the Notification dated 08.06.2018 as per Annexure-B since grave injustice has been caused to the Petitioner and to quash the points of Assessment made wrongly by the Permanent Committee as per Annexure-J in DSA No. 2/18 furnished to the petitioner on 11.12.2018.

These writ petitions having heard and reserved for order, coming on for pronouncement of Order/Judgment, this day, **Chief Justice** delivered the following:

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JUDGMENT

> ***"The vital role of the lawyer depends upon his probity and professional life-style. Be it remembered that the central function of the legal profession is to promote the administration of justice. If the practice of law is thus a public utility of great implications and a monopoly is statutorily granted by the nation, it obligates the lawyer to observe scrupulously those norms which make him worthy of the confidence of the community in him as a vehicle of justice-social justice."***
>
> *V.R. Krishna Iyer., J. In Bar Council of Maharashtra v. M.V. Dabholkar, (1976) 2 SCC 291, para-15*

This group of writ petitions raises many interesting issues. In a sense, these petitions are very peculiar where all the contesting parties are the members of the Bar. Though the High Court on the administrative side is a party, it is not a contesting party in that sense. In exercise of the powers conferred by sub-section (1) of Section 34 read with Sub-Section (2) of Section 16 of the Advocates Act, 1961 (for short 'the Advocates Act') and in accordance with the guidelines laid down by the Apex Court in its Judgment dated 12th October, 2017 in the case of ***Smt. Indira Jaising –vs- the Supreme Court of India***[1], the High Court of Karnataka (Designation of Senior Advocates) Rules, 2018 (for short 'the Senior Advocates Rules') were framed by the High Court of Karnataka. As per the Senior Advocates Rules, by a notification dated 16th November, 2018 (for short 'the impugned

[1] (2017) 9 SCC 766

notification'), the High Court of Karnataka has designated eighteen Advocates as Senior Advocates with effect from the date of the notification. The challenge in this group of petitions is essentially to the said notification and the decision making process followed for designating the said eighteen Advocates as Senior Advocates. In substance, the challenge is to the decision making process adopted by the High Court.

I. BRIEF FACTS OF THE CASE/PRAYERS:

2. Now, we may briefly refer to the facts of individual cases.

Writ Petition No. 6380 of 2019: This writ petition is filed by an Advocate practicing in this Court who has put in about 44 years of practice. He appeared in person. In the writ petition, he has stated that on an earlier occasion when certain Advocates were designated, he had filed petitions challenging the earlier two notifications issued by which, sixteen Advocates were designated as Senior Advocates. Those writ petitions were dismissed. He carried the matter to the Apex Court by filing Special Leave Petitions. Though the petitions were dismissed, the Apex Court had granted liberty to him to intervene in the writ petition filed by ***Smt Indira Jaising*** in the Supreme Court of

India. The petitioner has fairly pointed out that he did not apply for intervention in the said petition.

3. The prayer in this writ petition is for quashing the impugned notification and for issuing a writ of mandamus to the High Court of Karnataka to do the entire exercise afresh, based on the applications already received. Another prayer is to issue a writ of mandamus or any other appropriate writ directing the Government of India to frame the Rules in exercise of the powers conferred on it under sub section (2) of Section 16 of the Advocates Act, strictly in conformity with the objects and purposes of the Advocates Act. IA-2 of 2019 has been filed in this writ petition for production of documents. It is contended that the Senior Advocates Rules framed by the High Court of Karnataka are not in conformity with the guidelines issued by the Apex Court in the decision in the case of ***Indira Jaising*** and therefore, he seeks to produce the Rules framed in terms of the said decision of the Apex Court by the High Court of Judicature at Bombay and the High Court of Delhi.

4. **W.P.No. 5368 of 2019:** This writ petition has been filed by four practicing Advocates who had submitted proposals for

conferring the designation on them as Senior Advocates and whose names are not found in the impugned notification. The prayer in this petition is for quashing the impugned notification and for issuing a writ of mandamus enjoining the High Court of Karnataka to re-do the entire exercise strictly in accordance with the law laid down by the Apex Court in the case of ***Indira Jaising*** as well as the Senior Advocates Rules. There are certain factual challenges in this writ petition. There is a challenge to an appointment of an Advocate on the ground that subsequent to the impugned notification, Sole Arbitrator has recorded a finding against him of unprofessional conduct.

5. W.P.No. 35595 of 2019: The petitioner in this writ petition is a practicing Advocate who has practiced law for more than thirty-three years in this Court. The petitioner had challenged the earlier notifications issued for the same purpose. In this writ petition, there is a prayer for declaring that sub-rule (1) of Rule 5 and sub-rule (7) of Rule-6 of the Senior Advocate Rules, as contrary and inconsistent with the provisions of sub-section (2) of Section 16 of the Advocates Act. The second prayer is for quashing the impugned notification. The third

prayer is for issue of a writ of mandamus against the first respondent enjoining the first respondent to re-do the entire exercise.

6. **W.P.No. 7388 of 2019:** This writ petition has been filed by an Advocate appearing in person. He has purportedly filed this writ petition in public interest though the averments in the petition indicate that it is filed for espousing his own cause. He had applied for designation as a Senior Advocate. His name is not found in the impugned notification. The prayer made in this writ petition is very peculiar. The prayer is for directing the High Court of Karnataka to re-assess his case in the absence of the Senior Advocates Rules and to quash the assessment made wrongly by the Permanent Committee constituted by the Chief Justice, insofar as it relates to his case. He has filed his additional affidavit for relying upon certain decisions. The additional affidavit refers to several previous petitions filed by him in public interest and he has contended that the Permanent Committee constituted as per the decision of the Apex Court has violated Article-14 of the Constitution of India.

II. GIST OF STATEMENTS OF OBJECTIONS:

7. Now, we come to the statements of objections filed by various parties. While we are referring to the statements of objections, we are broadly referring to the contentions raised therein by avoiding repetitions. There are statement of objections filed on behalf of the High Court of Karnataka and the Permanent Committee (first and second respondents).

W.P.No. 6380 of 2019: In the statement of objections filed by the first and second respondents (High Court and Permanent Committee), an objection is raised that the petitioner cannot maintain a writ petition in the nature of a public interest litigation for challenging the impugned notification. There are other factual assertions made in the statement of objections. However, as far as the said two respondents are concerned, we will have to go by the record of which an inspection was given to the learned counsel appearing for the parties as well as the parties.

8. There is a rejoinder filed by the petitioner in W.P.No.6380 of 2019 to the said statement of objections, in which, he has quoted the questions posed by the Permanent Committee to

various candidates. He has relied upon the order of the Supreme Court upholding his *locus standi*. He has stated that the statement of objections filed by the first and second respondents lacks the transparency. He relied upon the statement of objections filed by the Advocates' Association of Bengaluru in W.P.No.36789/2014 and in particular, the statements made in paragraphs-8 and 9 thereof. The petitioner has filed additional rejoinder again raising several factual points. He also relied upon the affidavits filed by two candidates which are annexed to the additional rejoinder. One of the affidavits is by Shri B.C. Thiruvengadam, Advocate in which, he has quoted certain questions posed to him by the members of the Permanent Committee during interview. He has stated that the interaction did not last not even for five minutes. The other affidavit is filed by Shri. A.G. Shivanna, Advocate. Shri A.G. Shivanna has again stated as to how the questions were asked to him by the members of the Permanent Committee.

9. We must note here that the first and second respondents have filed similar objections in Writ Petition No. 5368 of 2019.

There is a rejoinder filed by the petitioner to the said objections. Certain factual details were pleaded in this rejoinder.

10. The third respondent (Shri R.V.S. Naik) in W.P.No. 6380 of 2019 filed a statement of objections. Mainly, the issue of *locus standi* of the petitioner was canvassed in the objections. The eighth respondent filed statement of objections in W.P.No.5368 of 2019. There is nothing particular in the objections.

11. The twelfth Respondent (Sri Arunkumar K) in W.P.No.5368 of 2019 has filed his statement of objections. In the said statement, most of the assertions in the writ petition have been denied. There is a reference to his own credentials in the affidavit.

12. A statement of objections have been filed by eighteenth respondent (Smt Jayna Kothari) in W.P.No. 5368 of 2019. Generally, the objections contain the denials. Reliance is placed on the statement of objections filed on behalf of the first and second respondents. Similar statement of objections have been filed by the same parties in Writ Petition No.6380 of 2019.

13. The fifteenth Respondent (Sri Sandesh J. Chouta) has filed statement of objections in W.P.No.5368 of 2019 which again contains general denials.

14. In W.P.No. 5368 of 2019, a rejoinder has been filed by the petitioners to the statement of objections based on the inspection of the documents provided to the petitioners as per the order of this Court. In the rejoinder, the case of the petitioner has been reiterated that the Hon'ble Chief Justice had insisted on fixing the bench mark of 50 points and only those candidates who have secured 50 and above points would be considered for designating them as Senior Advocates and that the Full Court had no opportunity to consider the cases of the other applicants who had secured less than 50 marks. It is pointed out that the records shows that the case of the two Advocates who had secured more than 50 points was deferred without assigning any reasons and in case of 15 Advocates, who had scored marks between 40 to 50, their cases were deferred with a rider that bar of two years under sub-rule (10) of Rule-6 of the said Senior Advocates Rules will not apply. In the rejoinder, reliance is placed on a photocopy of an award of Sole Arbitrator which has

been referred in paragraph 28 of the writ petition. In paragraph 28 of the writ petition, reliance is placed on an award made against twelfth respondent (Sri Arun Kumar.K) wherein, in an Arbitral proceedings, a former Judge of this Court passed strictures against twelfth respondent for not adhering to the professional ethics.

15. In W.P.No. 5368 of 2019, fourteenth respondent (Sri A.S. Ponnanna) has filed his statement of objections in which he has pointed out that he has worked as Additional Advocate General with three different Advocate Generals and therefore, the allegations of bias cannot be made against the present Advocate General who was a member of the Permanent Committee.

16. In W.P.No. 5368 of 2019, statement of objections has been filed by the eighth respondent (Sri. Gurudas Shyamrao Kannur) which contains the general denials and some reference to his own credentials.

17. In W.P.No. 5368 of 2019, eleventh respondent (G. Shivadass) has filed his statement of objections generally containing denials. In W.P.No.5368 of 2019, statement of

objections have been filed by the ninth Respondent (Shri Kuloor Arvind Kamath). It is pointed out that the answering respondent has furnished the list of some of the selected judgments in the cases in which he has appeared and made submissions. The answering respondent has claimed that the said list is not exhaustive list of judgments but is of those judgments, which according to the said respondent, are relevant.

18. In W.P. No. 5368 of 2019, the sixteenth Respondent (Smt Lakshmy Iyengar) has filed a statement of objections. As noted earlier, the petitioners in this writ petition had applied for designation and the impugned notification does not find their names. The sixteenth respondent has referred to the campaign on social media platforms by first and the fourth respondents making the misplaced grievances regarding the process followed before issuing the impugned notification. The sixteenth respondent has chosen to make imputations against the fourth petitioner's father, who is one of the senior most designated Advocates, alleging that he was involved in an unethical propaganda against the sixteenth respondent by making phone calls to several Senior Advocates. We are referring to those

allegations in the subsequent part of this judgment, as the same have some bearing. We must note that we had given an opportunity to the learned Senior Counsel representing the sixteenth respondent to withdraw the said allegations, but on instructions, he expressed inability to do so. The printouts of certain messages on social media platforms have been annexed. Copies of certain letters have also been annexed.

19. There is a rejoinder filed by the petitioners in W.P. No. 5368 of 2019 dealing with the statements made in the objections. There is also an additional rejoinder filed by the petitioners. Certain comments are offered about the reported judgments in which sixteenth respondent had appeared.

20. Nineteenth Respondent in WP. No. 5368/2019 (Sri. Shankar A) has filed statement of objections which records that in how many reported cases he had appeared and gives details thereof.

III. THE RELEVANT LEGAL PROVISIONS

21. The Advocates Act, as far as chapters – I, II and VI are concerned, was brought into force with effect from 16th August

1961. Chapter-III, which is relevant for our consideration, was brought into force with effect from 01st December 1961.

22. If we peruse the statement of objects and reasons of the Bill of the Advocates Act, it is stated therein that one of the main features of the bill is the integration of the Bar into a single class of legal practitioners known as Advocates. The reason is that till the year 1961, there were different classes of advocates which were known by different nomenclatures in various parts of India such as Pleaders, District Court Pleaders, High Court Pleaders, Vakils etc. In the chartered High Courts like the High Court of Judicature at Bombay where original jurisdiction is vested in the High Court, there was a category known as Advocates (Original Side). Even the qualifications for holding the aforesaid designations were different. The Advocates Act created only one class of legal practitioners known as Advocates as defined in clause (a) of sub-Section (1) of Section 2 thereof. Section 16 of Chapter-III of the Advocates Act, which came into force on 1st December 1961, provided for dividing the Advocates into two classes, namely, Senior Advocates and Advocates.

Section 16 of the Advocates Act read thus:

> *"16. Senior And other advocates.- (1) There shall be two classes of advocates, namely, senior advocates and other advocates.*
>
> *(2) An advocate may, with his consent, be designated as senior advocate if the Supreme Court or a High Court is of opinion that by virtue of his ability [standing at the Bar or special knowledge or experience in law] he is deserving of such distinction.*
>
> *(3) Senior advocates shall, in the matter of their practice, be subject to such restrictions as the Bar Council of India may, in the interest of the legal profession, prescribe.*
>
> *(4) An advocate of the Supreme Court who was a senior advocate of that Court immediately before the appointed day shall, for the purposes of this section, be deemed to be a senior advocate:*
>
> *[Provided that where any such senior advocate makes an application before the 31st December, 1965 to the Bar Council maintaining the roll in which his name has been entered that he does not desire to continue as a senior advocate, the Bar Council may grant the application and the roll shall be altered accordingly.]"*
>
> (Underlines supplied)

The phrase 'standing at the Bar' or 'special knowledge' or 'experience in law' was substituted for the words "experience and standing at the Bar" with effect from 31st January, 1974.

23. The Apex Court and various High Courts followed their own procedures for designating Advocates as Senior Advocates.

Sub Section (2) of Section 16 provides that the power to designate an Advocate as a Senior Advocate vests in the High Court, which means that the power vests in the Full Court of the High Court. In terms of sub-section (3) of Section 16, the Bar Council of India has imposed restrictions on the Senior Advocates as provided in Chapter-I titled as "Restrictions on Senior Advocates" in Part-VI of the Bar Council of India Rules. One of the restrictions is that he is disentitled to file *vakalatnama* or *vakalath* in any Courts.

24. Before we come to the procedure followed by various High Courts, we must come to the decision of the Apex Court in the case of ***Indira Jaising*** (supra). Paragraphs 55 to 58 of the said decision indicate that the Apex Court even considered the issue whether Section 16 was constitutionally fragile. Paragraphs 55 to 58 read thus:

> *"55. The exercise of the power vested in the Supreme Court and the High Courts to designate an Advocate as a Senior Advocate is circumscribed by the requirement of due satisfaction that the advocate concerned fulfils the three conditions stipulated under Section 16 of the Advocates Act, 1961, i.e., (1) ability; (2) standing at the bar; and/or (3) special knowledge or experience in law that the person seeking designation has acquired. It is not an*

uncontrolled, unguided, uncanalised power though in a given case its exercise may partake such a character. However, the possibility of misuse cannot be a ground for holding a provision of the Statute to be constitutionally fragile.

56. The consequences spelt out by the intervener, namely, (1) indulgence perceived to be shown by the Courts to Senior Advocates; (2) the effect of designation on the litigant public on account of high fees charged; (3) its baneful effect on the junior members of the Bar; and (4) the element of anti-competitiveness, etc. are untoward consequences occasioned by human failures. Possible consequences arising from a wrong/improper exercise of power cannot be a ground to invalidate the provisions of Section 16 of the Act. Recognition of qualities of merit and ability demonstrated by in-depth knowledge of intricate questions of law; fairness in court proceedings consistent with the duties of a counsel as an officer of the Court and contributions in assisting the Court to charter the right course of action in any given case, all of which would go to determine the standing of the Advocate at the Bar is the object behind the classification. Such an object would enhance the value of the legal system that Advocates represent. So long as the basis of the classification is founded on reasonable parameters which can be introduced by way of uniform guidelines/norms to be laid down by this Court, we do not see how the power of designation conferred by Section 16 of the Act can be said to be constitutionally impermissible.

57. Similar is the position with regard to the challenge founded on the alleged violation of Article 18 of the Constitution of India. The designation "Senior Advocate" is hardly a title. It is a distinction; a recognition. Use of the said

designation (i.e. Senior Advocate), per se, would not be legally impermissible inasmuch as in other vocations also we find use of similar expressions as in the case of a doctor referred to as a "Consultant" which has its own implications in the medical world. There are doctors who are referred to as "Senior Consultants" or as a "Senior Surgeon". Such expressions are instances of recognition of the talent and special qualities of a person which has been proved and tested over a period of time. In fact, even in bureaucratic circles such suffixes and prefixes are also not uncommon.

58. We, therefore, take the view that the designation of "Advocates" as "Senior Advocates" as provided for in Section 16 of the Act would pass the test of constitutionality and the endeavour should be to lay down norms/ guidelines/parameters to make the exercise conform to the three requirements of the Statute already enumerated herein above, namely, (1) ability of the advocate concerned; (2) his/her standing at the bar; and (3) his/her special knowledge or experience in law."

(Underlines supplied)

25. Apart from considering practice followed in the other countries, the Apex Court referred to the practice followed by High Courts in India for designating Advocates as Senior Advocates and the guidelines laid down therein. Paragraphs 35 to 35.3 of the said decision under the caption '(11) High Court of

Karnataka' incorporate the practice followed for designating Senior Advocates by this Court.

Paragraphs 35 to 35.3 reads thus:

> ***"(11) High Court of Karnataka***
>
> ***35.*** *The High Court of Karnataka employs this procedure in order to designate advocates as a Senior Advocate:*
>
> ***35.1.*** *The application seeking designation may be moved by a Judge of the High Court, two Senior Advocates practising before the High Court or by the advocate himself.*
>
> ***35.2.*** *The advocate must have an experience which is not less than 15 years at the Bar and must have a net annual taxable income which is not less than three lakh rupees over the preceding five years.*
>
> ***35.3.*** *An advocate must secure a simple majority of votes cast at the meeting of the Full Court in order to secure the designation of a Senior Advocate. The advocates rejected by the High Court will not be considered for a subsequent period of two years".*

(Underlines supplied)

26. As indicated by the Apex Court in paragraph-58 in the decision in the case of ***Indira Jaising***, in paragraph-73, the Apex Court has laid down the norms/guidelines by stating that henceforth, the norms/guidelines laid down in paragraph 73

would govern the exercise of designation of Senior Advocates in the Apex Court as well as all the High Courts. It is further stated in paragraph 73 that the norms/guidelines in existence shall be suitably modified so as to be in accord with the norms/guidelines laid down by the Apex Court. Thus, on plain reading of paragraphs 73, it is crystal clear that the Apex Court, by exercise of its plenary jurisdiction under Article 142 of the Constitution of India, directed all the High Courts not only to follow the norms/guidelines laid down in paragraph 73 of the said decision, but directed them to amend the procedure/guidelines followed by them so as to bring it in accord with the guidelines/norms laid down by it.

Paragraph 73 to 73.11, which contain the guidelines/ directions, read thus:

> *"73. It is in the above backdrop that we proceed to venture into the exercise and lay down the following norms/guidelines which henceforth would govern the exercise of designation of Senior Advocates by the Supreme Court and all High Courts in the country. The norms/guidelines, in existence, shall be suitably modified so as to be in accord with the present."*
>
> ***73.1.*** *All matters relating to designation of Senior Advocates in the Supreme Court of India and in all the High Courts of the country shall be dealt with by a Permanent Committee to be known as "Committee for Designation of Senior Advocates";*

73.2. *The Permanent Committee will be headed by the Hon'ble the Chief Justice of India and consist of two senior most Judges of the Supreme Court of India [or High Court(s), as may be]; the learned Attorney General for India (Advocate General of the State in case of a High Court) will be a Member of the Permanent Committee. The above four Members of the Permanent Committee will nominate another Member of the Bar to be the fifth Member of the Permanent Committee;*

73.3. *The said Committee shall have a permanent Secretariat, the composition of which will be decided by the Chief Justice of India or the Chief Justices of the High Courts, as may be, in consultation with the other Members of the Permanent Committee;*

73.4. *All applications including written proposals by the Hon'ble Judges will be submitted to the Secretariat. On receipt of such applications or proposals from Hon'ble Judges, the Secretariat will compile the relevant data and information with regard to the reputation, conduct, integrity of the advocate(s) concerned including his/her participation in pro bono work; reported judgments in which the advocate(s) concerned had appeared; the number of such judgments for the last five years. The source(s) from which information/data will be sought and collected by the Secretariat will be as decided by the Permanent Committee;*

73.5. *The Secretariat will publish the proposal of designation of a particular advocate in the official website of the Court concerned inviting the suggestions/views of other stakeholders in the proposed designation;*

73.6. *After the database in terms of the above is compiled and all such information as may be specifically directed by the Permanent Committee to be obtained in respect of any particular candidate is*

collected, the Secretariat shall put up the case before the Permanent Committee for scrutiny;

73.7. *The Permanent Committee will examine each case in the light of the data provided by the Secretariat of the Permanent Committee; interview the advocate concerned; and make its overall assessment on the basis of a point based format indicated below:*

Sl. No.	*Matter*	*Points*
1	*Number of years of practice of the applicant advocate from the date of enrolment.* *[10 points for 10-20 years of practice; 20 points for practice beyond 20 years]*	*20 points*
2	*Judgments (reported and unreported) which indicate the legal formulations advanced by the advocate concerned in the course of the proceedings of the case; pro bono work done by the advocate concerned; domain expertise of the applicant advocate in various branches of law, such as Constitutional law, Inter-State Water Disputes, Criminal law, Arbitration law, Corporate law, Family law, Human Rights, Public Interest Litigation, International law, law relating to women, etc.*	*40 points*
3	*Publications by the applicant advocate*	*15 points*
4	*Test of personality and suitability on the basis of interview/ interaction*	*25 points*

73.8. *All the names that are listed before the Permanent Committee/cleared by the Permanent Committee will go to the Full Court.*

> ***73.9.*** *Voting by secret ballot will not normally be resorted to by the Full Court except when unavoidable. In the event of resort to secret ballot, decisions will be carried by a majority of the Judges who have chosen to exercise their preference/choice.*
>
> ***73.10.*** *All cases that have not been favourably considered by the Full Court may be reviewed/reconsidered after expiry of a period of two years following the manner indicated above as if the proposal is being considered afresh;*
>
> ***73.11.*** *In the event a Senior Advocate is guilty of conduct which according to the Full Court disentitles the Senior Advocate concerned to continue to be worthy of the designation, the Full Court may review its decision to designate the person concerned and recall the same".*

(Underlines supplied)

27. For the sake of completion, we are referring to paragraph 74 of the said decision, which is also material. Paragraph 74 reads thus:

> *"74. We are not oblivious of the fact that the guidelines enumerated above may not be exhaustive of the matter and may require reconsideration by suitable additions/deletions in the light of the experience to be gained over a period of time. This is a course of action that we leave open for consideration by this Court at such point of time that the same becomes necessary."*

28. As per the directions of the Apex Court, the Senior Advocates Rules were framed by the High Court of Karnataka which came into force on 8th June 2018.

The said Rules read thus:

"The High Court of Karnataka (Designation of Senior Advocates) Rules, 2018:

*1. **Short title and commencement.-***

*(1) These Rules shall be called '**The High Court of Karnataka (Designation of Senior Advocates) Rules, 2018**'.*

(2) These Rules shall come into force at once.

2. Definitions.- In these Rules, unless the context otherwise requires,-

(a) "Advocate" means an Advocate entered in any roll under the provisions of the Advocates Act, 1961;

(b) "Committee" means the Permanent Committee for Designation of Senior Advocates constituted under sub-rule (1) of Rule 5 of these Rules.

(c) "Court" includes any authority exercising judicial powers in the State of Karnataka.

(d) "High Court" means the High Court defined in Section 2(g) of the Advocates Act, 1961;

(e) "Roll" means the roll of Advocates prepared and maintained under the Advocates Act, 1961;

(f) "Secretariat" means the Secretariat established by the Chief Justice of the High

Court of Karnataka under sub-rule (2) of Rule 5 of these Rules.

3. Designation of an Advocate as a Senior Advocate.- *(1) The High Court of Karnataka may designate an Advocate as a Senior Advocate, if in its opinion, by virtue of his ability and standing at the Bar, he is deserving of such distinction.*

Explanation: *The term "standing at the Bar" means the position of eminence attained by an Advocate at the Bar by virtue of his seniority, legal acumen and high ethical standards maintained by him, both inside and outside the Court.*

(2) No person shall be eligible to be designated as a Senior Advocate unless he has actually practiced as an Advocate for not less than ten years in the High Court of Karnataka or in any Court subordinate to the High Court of Karnataka and has appeared and actually argued in some reported cases or cases involving important questions of law.

4. Motion for designation as a Senior Advocate.-

(1) Designation of an Advocate as a Senior Advocate by the High Court of Karnataka may be considered on the written proposal made by:

(a) the Chief Justice or any sitting Judge of the High Court of Karnataka; or

(b) the Advocate General for State of Karnataka; or

(c) two Senior Advocates practicing in the High Court of Karnataka.

Provided that every such proposal shall be made, as far as possible, in Form No. 1 of Appendix-A appended to these Rules and shall carry a written consent of the Advocate concerned to be designated as a Senior Advocate.

(2) Designation of an Advocate as a Senior Advocate by the High Court of Karnataka may also be considered on the written application of an Advocate that shall be made, as far as possible, in Form No.2 of Appendix-A appended to these Rules.

(3) Along with the proposal or application, as the case may be, the Advocate shall append his certificate that he has not applied to any other High Court for being designated as a Senior Advocate and that his application has not been rejected by the High Court within a period of two years prior to the date of the proposal or application.

5. Permanent Committee for Designation of Senior Advocates.-

(1) All matters relating to designation of Senior Advocates in the High Court of Karnataka shall be dealt with by a Permanent Committee (to be known as "Committee for Designation of Senior Advocates") which will be headed by the Chief Justice and consists of: (i) two senior-most sitting Judges of the High Court of Karnataka; (ii) the Advocate General for State of Karnataka; and (iii) a member of the Karnataka High Court Bar, to be nominated by the other members of the committee.

(2) The Committee constituted under sub-rule (1) above shall have a Secretariat, the composition of which shall be decided by the Chief Justice of

the High Court of Karnataka in consultation with the other members of the Committee.

(3) The Committee may issue such directions from time to time as deemed necessary as regards functioning of the Secretariat, including the manner in which, and the source/s from which, the necessary data and information are to be collected, compiled and presented.

6. Procedure for designation.-

(1) All applications and written proposals for designation of an Advocate as a Senior Advocate shall be submitted to the Secretariat.

(2) On receipt of the application or proposal for designation of an Advocate as a Senior Advocate, the Secretariat shall compile the relevant data and information with regard to the reputation, conduct, and integrity of the Advocate including his participation in pro-bono work and reported cases or cases involving questions of law in which he had appeared and actually argued during the last five years.

(3) The Secretariat will publish the application/proposal received for designation of an Advocate as a Senior Advocate in the official website of the High Court of Karnataka inviting suggestions/views of other stakeholders to the proposed designation within such time as may be directed by the Committee.

(4) The Secretariat will place the suggestions/views of other stakeholders to the proposed designation before the Committee for taking further instructions. The Committee may, if considered fit and necessary, seek the response from the Advocate on the suggestions/views received in relation to his

proposed designation, within such time as may be directed.

(5) After the data-base in terms of the above is compiled and all such information as may be specifically directed by the Committee to be obtained in respect of the Advocate is collected, and the suggestions/views of the other stakeholders as also the response from the Advocate, if any, have been received, the Secretariat shall put up the case before the Committee for scrutiny.

(6) Upon submission of the case by the Secretariat for scrutiny, the Committee shall examine the same in the light of the data provided and shall interview the Advocate; and shall, thereafter, make its overall assessment on the basis of the point-based format provided in Appendix – B appended to these Rules.

(7) After the overall assessment of Advocates by the Committee, the names of those Advocates will be submitted to the Full Court along with the respective assessment reports.

(8) Voting by secret ballot will not normally be resorted to in the Full Court except when unavoidable. In the event of resort to secret ballot, decisions will be carried by a majority of the Judges who have chosen to exercise their preference/choice.

(9) On the approval of Full Court, an Advocate shall be designated as a Senior Advocate.

(10) The cases that have not been favourably considered by the Full Court may be reviewed/reconsidered after expiry of a period of two years in the manner indicated above, as if

the proposal/application is being considered afresh.

7. Restrictions on Senior Advocates.- *An Advocate on being designated as Senior Advocate, shall be subject to such restrictions as the High Court of Karnataka or the Bar Council of India may prescribe.*

8. Canvassing*.- Canvassing in any manner by a nominee/applicant shall disqualify him for being designated as a Senior Advocate.*

9. Review and recall*.- <u>In the event of a Senior Advocate being guilty of any such conduct which according to the Full Court disentitles him to be worthy of designation as a Senior Advocate, the Full Court may review and recall its decision to designate him as a Senior Advocate after such notice to him as may be directed by the Chief Justice.</u>*

10. Notification of designation/recall*.- In the event of designation of an Advocate as a Senior Advocate, or on recalling of any such designation, the notification to that effect shall be issued and published in such manner as may be directed by the Chief Justice.*

11. Interpretation*.- All questions relating to interpretation of these rules shall be referred to the Chief Justice whose decision thereon shall be final.*

12. Repeal and Savings*.- All the previous Rules relating to the subject matter covered by these Rules, including the Guidelines for Designating an Advocate as a Senior Advocate, as made by the High Court of Karnataka with all its amendments/modifications, are hereby repealed. However this repeal shall not, by itself, invalidate the actions taken under the repealed Rules/Guidelines.*

> ***13.*** *All pending applications for designation shall be returned to the Advocates concerned for applying afresh in accordance with these Rules. All pending proposals/recommendations for designation shall also be likewise returned."*

(underlines supplied)

IV. SUBMISSIONS OF THE PARTIES:

29. Now we turn to the submissions made by the parties:

Detailed submissions were made by the petitioner appearing in person in Writ Petition No. 6380 of 2019. His written submissions can be summarised as under:

29.1 He pointed out that only those Advocates who have secured 50 marks and above have been designated as Senior Advocates by treating 50 marks as the cut off marks. The first and second respondents in their counter do not dispute the fact that 3rd to 20th respondents have secured more than 50 marks but the cases of two applicants who had secured more than 50 marks have been deferred. It is stated that first and second respondents have contended that the Full Court decided to defer the applications submitted by two persons viz., Kiran S. Javali and Suresh S. Lokre. These two advocates have also secured more than 50 marks. The reason why their names were deferred

is not forthcoming in the statement of objections filed by the first and second respondents. But, the fact that 50 marks have been taken as cut off marks is evident from the fact that the case of another 15 lawyers who had obtained marks between 40 to 50 was deferred without the bar of two years. The Senior Advocates Rules framed by the Hon'ble High Court of Karnataka do not provide for deferring any application. Further it also proves the fact that persons with 50 marks and more marks alone were considered for designation. This is contrary to the decision of Calcutta High Court in the case of ***Debasish Roy Vs. Mr. Joydeep Kar and others***[2]. Since, there is no provision for fixing cut off marks, the notification has to be set aside.

29.2 The petitioner has contended that the Full Court did not consider the application of each one of the applicants which is mandatory. This Hon'ble Court permitted the petitioner to peruse some of the documents which included the Full Court resolution dated 15th November, 2018. On perusal of the resolution it fully proves this contention of the petitioner that individual applicants were not considered. In the first place the resolution takes note of certain factors. They are –

[2] WP No. 18345 of 2018 decided on 31st January 2019

i) That the designations have not been done for the last more than 3 years,

ii) There were only 65 senior advocates,

iii) The 3rd and most important factor that weighed with the Full Court was that the committee appointed as per the dictum of the Supreme Court in Indira Jaising's case produced at Annexure-C to the writ petition and also as per Rule 6 of the High Court of Karnataka Designation of Senior Advocates Rules 2018 had submitted point based assessment.

29.3 The Committee appointed under Rule 6 is not the final authority on the designation. It is the Full Court which takes final decision. So much so the Full Court can in law reject all the recommendations made by the committee and pick up its own candidates.

29.4 After noting the above factors, the Full Court states that it has resolved to designate 18 persons as Senior Advocates. It also decided to defer the consideration of 15 candidates but by exempting them from the bar of two years. The High Court also rejected the application of the remaining candidates. Even these applications were not separately considered. This is evident from paragraph "g" in the resolution on Item No. 3. Three High Court Judges Hon'ble Shri Justice S.N. Sathyanarayana, Hon'ble Dr. Justice Prabhakara Sastry and Hon'ble Shri Justice Srinivas

Harish Kumar had dissented and opined that all the applications be put to secret voting. This request would not have been made had the Full Court considered all the applications separately. Unfortunately, the Full Court does not even answer the request of three learned Judges. Further one of the learned Judges Hon'ble Shri Justice John Michael Cunha dissented with regard to deferment of Applicant (15 in number) giving them relaxation of operation of 6 (1) of the Rules. This dissent has also not been answered by the Full Court. The above procedure adopted by the Full Court goes against the provisions of Section 16(2) of the Advocate's Act and the dictum of the Hon'ble Supreme Court in ***Indira Jaising's*** case (Annexure-C) which clearly states that the point-based assessment and the names cleared by the permanent committee will go before Full Court. Therefore, the Full Court is the final authority as per Section 16(2) of the Advocate's Act and also as per the ruling in ***Indira Jiasing's*** case. This exercise having not been made the designation should be set aside and the assessment should be re-done.

29.5 The petitioner has contended that the designation of the candidates is vitiated. The committee has ignored the claim of advocates who had put in 30 to 40 years of practice. On perusal of the list submitted by the committee clearly shows arbitrariness made by the committee while assessing the candidates. Marks are awarded as per (a) number of years – 20 points, (b) judgments – 40 points, (c) publication – 15 points and (d) test of personality – 25 points. As per the proceedings, the committee made assessment regarding judgment, publication and number of years of practice only on 11th November 2018. This is evident from the letter of the Registrar produced as Annexure – J-1 in W.P. No. 5368 of 2019, wherein it is clearly stated that marks regarding interview were awarded on the date of interview/interaction. If the number of cases reported and unreported submitted by all applicant is compared, it transpired that in on most arbitrary manner the committee has conducted the interview/interaction and that the committee could not have made the assessment in one day i.e. on 11th November, 2018.

29.6 The petitioner has contended that interview is only for the purpose of interaction. He has further contended that though two

affidavits by Shri B.C. Thiruvengadam and another by Shri A.G. Shivanna, ignoring their contribution to the profession, the committee asked most irrelevant questions to them.

29.7 One of the members of the committee had been transferred to the High Court of Judicature, Hyderabad viz., Telangana and Andhra Pradesh by Presidential order dated 08th November, 2018 and he was directed to take charge of the office of the Judge of High Court of judicature at Hyderabad on or before 22nd November, 2018. As per the provision of Articles 222 and 217, the Hon'ble Judge had demitted the office on 08th November, 2018 and the fact that he was permitted to assume charge on or before 22nd November, 2018 cannot be taken note of upholding that he was Judge of Karnataka High Court till 22nd November, 2018. In the decision reported in the case of ***Union of India –vs- Sankalchand Himatlal Sheth and another[3],*** the Hon'ble Supreme Court has held that the Judges of the High Court remain Judges of that High Court till then assume charge in the transferee court. But this decision has been clarified in a later decision of the Supreme Court of 7 Hon'ble Judges in the

[3] (1977) 4 SCC 193

case of ***S.P. Gupta –vs- Union of India***[4]***.*** This decision sets at rest the law regarding transfer. It clearly established that the learned Judge who was transferred to the High Court of Judicature, Hyderabad had demitted his office on 08th November, 2018.

29.8 The guidelines issued by the Hon'ble Supreme Court have virtually failed in bringing in more transparency in the designation of advocates in as much as it has given lever to the committee to misuse its power in arbitrarily conducting the interview/interaction to suit their ends and to give cut off marks to eliminate unwanted advocates. The Hon'ble Supreme Court in its desire to bring in transparency never envisaged this. Hence, a direction or at least a suggestion that there is necessity for framing Rules by the Central Government may be made in regard to designation of advocates.

30. The learned counsel for the petitioner in Writ Petition No.5368-71 of 2019 also made following detailed submissions:

30.1 Fixing benchmarks of 50 points is established.

[4] AIR 1982 SC 149 = 1981 Supp SCC 87

(i) All 18 advocates designated have secured 50 points or above.

(ii) Two advocate in the deferred list have also secured above 50 points

(iii) 15 advocates whose candidature is deferred have secured above 40 and below 50 points. Fixation of bench mark is not contemplated by the rules and also contrary to ***Indira Jaising*** Case.

30.2. It is conceded by first and second respondents that assessment report of the Committee is not the sole criteria but only an aid. However, records reveal the report was made the sole criteria.

30.3 The Full Court did not consider the case of 68 candidates individually as all the necessary material were neither placed before it nor circulated.

30.4. The decision of the Full Court to designate was not unanimous. Number of judges sought for voting. Rejecting the request for voting is in clear violation of the Rule 6 (8) of the Rules. In other words, the decision to designate cannot be said to be that of the Full Court.

30.5 The decision to defer some cases is contrary to Rule 6(1) of the Rules.

30.6. The Secretariat has admitted that points on 3 parameters except interview were awarded by the Committee on 11th only. This is improbable to say the least.

30.7 Some illustrations provided by the petitioners in the body of the Writ Petition as well as the Rejoinder clearly establish that the points awarded as compared between designated Advocates and others are highly arbitrary as no reasonable person could arrive at such conclusion on the material available on record.

30.8. The participation of the 3rd senior most Judge as part of the committee is in clear violation of Art. 217 (1) (c) of the Constitution. The learned Judge having been transferred by an order dated 8th November, 2018 could not have taken part in the proceedings of 11th November, 2018 for award of points on 3 important parameters.

30.9. This position is clear from the Judgment of the Hon'ble Supreme Court in the well known case of ***S.P. Gupta*** (supra). The relevant portion is reproduced herewith. "His Transfer to another High Court involves the vacation of his office in that High Court, that is to say, his appointment as a Judge of that high

court stands terminated. This is confirmed by Clause (c) of the Proviso to clause (1) of Art 217. Simultaneously, without anything more the transfer affects his appointment to the other High Court to which he is being sent. An order of transfer under clause (1) of Art. 222 therefore, is a transaction in two parts, the termination of the appointment as a Judge of the original High Court and the simultaneous appointment as a Judge of the other High Court."

IV(a): MAJOR PORTION OF WRITTEN SUBMISSIONS OF THE PETITIONERS IN W.P. NO. 35595 OF 2019, REPRODUCED VERBATIM:

31. The learned counsel appearing for the petitioners in W.P. No. 35595 of 2019 has made very detailed submissions orally as well as in writing. **We are reproducing substantial part of his written submissions verbatim. We have quoted the written submissions as it is only with the object of indicating the kind of submissions and extent of submissions made before the Court.** We are reproducing written submissions as it is in paragraph Nos 1 to 16.1 and 20 of the written submissions:

> ***"PREAMBLE:***
>
> *This is in the nature of a curative petition to undo the wrong decision of the Full Court on its*

Administrative side. Decision taken by the Full Court on administrative side designating 18 Advocates as Senior Advocates out of 68 applications, is contrary to the provisions of S.16(2) of the Advocates Act, 1961 R/w. R.6(9) of the High Court of Karnataka (Designation of Senior Advocates) Rules, 2018 and the guidelines laid down by the Hon'ble Supreme Court of India in the case of INDIRA JAISING. Hence the decision is manifestly arbitrary.

Decision is painful. So, the proceedings on judicial side may also be painful in examining the decision taken by Full Court, consisting of more than 30 Judges.

Conflict is Administrative mind of the Judges – Vs- The Judicial Mind to be applied exercising judicial review power of the Administrative decision taken by a large body, namely the Full Court. My responsibility is onerous but your lordships are generous in permitting us to look into part of the records, though not full.

We talk of judicial ethics and judicial ethos which represent the character and standards of judiciary, a constitutional institution.

1. *QUESTIONS FOR CONSIDERATION:*

(i) Whether the High Court of Karnataka (Designation of Senior Advocates) Rules, 2018 particularly R.3(1) is in conformity with the provisions

*of S.16(2) of the Act R/w para 55 and 65 of the judgement of the Supreme Court in INDIRA JAISING and whether R.5(1) R/w R.6(7) of the Rules empower the Permanent Committees to recommend only a few names to the Full Court for designation, in the guise of "all matters relating to Designation of Senior Advocates shall be dealt with Permanent Committee" and prevent the Full Court from considering the cases of all applicants u/s.16(2) of the Act R/w para 66 of the judgement of Supreme Court in INDIRA JAISING case***?**

*(ii) Whether the Permanent Committee for designation of Senior Advocates failed to discharge its duties but exceeded its powers and functions thereby vitiating the entire proceedings***?**

*(iii) Whether the Permanent Committee failed to identify the stake holders and the sources from which the Secretariat has to collect necessary data and information particularly relating to Standing at the Bar defined in explanation to R.3 and compile relevant data and information specified in R.6(2) of the Rules, which has vitiated all further proceedings in the matter***?**

(iv) Whether the Permanent Committee invited suggestions and view of concerned stake holders such as Bar Council, Advocates Association, Legal

*Aid Services Authority, Police etc., in respect of matter specified in R.3(1) and R.6(2) of the Rules, so as to make an overall assessment of candidate in the context of the specified requirements under the Rules and Supreme Court judgement**?***

*(v) Whether the Permanent Committee has maintained transparency and fairness in making overall assessment of 68 candidates to be in conformity with the principles laid down by the Hon'ble Supreme Court in para 65, 66 & 70 of its judgement**?***

(vi) Whether the Permanent Committee provided information to the Full Court about the High ethical standards maintained by the applicants, both inside and outside the court, as specified in R.3(1) and the requisite data and information in respect of matters specified in R.6(2) of the Rules, as a part of overall assessment of candidates to facilitate the Full Court to take a decision in respect of each candidate for designation inconformity with the provisions of S.16(2) of the Act and the judgement of Supreme Court?

(vii) Whether the Full Court has abdicated its powers and functions u/s.16(2) of the Advocates Act, R/w. the High Court Rules, 2018, by failing to perform its solemn duty exercising statutory powers and not

*following the guidelines and parameters specified by the Hon'ble Supreme Court in the matter of INDIRA JAISING 2017 (9) SCC 766, in the matter of Designating Senior Advocates***?**

*(viii) Whether the Full Court surrendered its independent Will to the Will power of the Hon'ble Judges of the Permanent Committee, affecting the independence of judiciary***?**

*(ix) Whether the decision of the Permanent Committee and the decision of the Full Court suffer from manifest arbitrariness thereby vitiating the proceedings affecting the, legitimate rights of all applicants under provisions of Act & Rules***?**

WHY RULES ARE CHALLENGED? SCOPE OF SECTION 16(2) OF THE ACT AND SCHEME OF THE RULES FRAMED BY THE HIGH COURT:

2. *The scope of S.16(2) of the Act and is explained by the Hon'ble Supreme Court in INDIRA JAISING'S case, in para 55. SC has held that the exercise of the power vested in the SC & HC to designate an Advocate as a Senior Advocate is circumscribed by the requirement of due satisfaction that the Advocate concern fulfils the three conditions stipulated u/s.16 of the Advocates Act, i.e.,*

(i) Ability

(ii) Standing at the Bar and / or
(iii) Special knowledge or experience in law that the person seeking designation has acquired.

2.1. *HC Rules partially reflect these conditions, in as much as R.3(1) only, in as much as condition No.(iii) i.e., Special knowledge or experience in law is omitted and only the other two conditions namely ability and standing at the Bar are included. However, explanation to the Rule explains the term "standing at the Bar". It speaks of the position of eminence attain by the Advocate at the Bar by virtue of his seniority, legal acumen. It also stipulates high ethical standards maintained by him, both inside and outside the court.*

<u>SUBMISSION</u>:

Though Rule is faulty by excluding special knowledge or experience in law, by way of explanation to the term "standing at the Bar" it has included position of eminence attained by an Advocate. It means eminence can be attained only after 10 years of practice. This is noteworthy and more requirement is stipulated than that of the stipulation for appointment of judges of the High Court under A.217(2) (b) of the Constitution of India. Constitution providing for appointment of Judges in the High court stipulates only 10 years as an

Advocate but does not speak of ability or special knowledge or experience in law.

But Advocates Act stipulates very high standards for the Designation of Advocate as a Senior Advocate stipulating ability, standing at the Bar and special knowledge or experience in law. Probably such high standards are expected for the reason that they are of utmost importance for Dispensation of Justice as they have to perform counselling duties to the Judges or to the court as judgements of the Judges or the products of good assistance of law on facts which can be provided only by Senior Advocates who are supposed to be eminent and shape the judgements with their rich contributions, irrespective of the results they could get.

RULE 3 PROVIDES FOR HIGH ETHICAL STANDARDS BOTH INSIDE AND OUTSIDE THE COURT:

3. *How this can be gathered**?** What are the sources from which information about the high ethical standards maintained by an Advocate who aspires to be Designated as Senior Advocate, both inside and outside the court.*

SUBMISSION:

The Permanent Committee constituted u/R.5 of the Rules is required to lay down guidelines for

functioning of the Secretariat including manner and methods and the sources from which the necessary data and information are to be collected, compiled and presented to the Permanent Committee.

NO GUIDELINES OR DIRECTIONS ISSUED BHY THE PERMANENT COMMITTTEE TO THE SECRETARIAT IN RESPECT OF THE FOLLOWING MATTERS REQUIRED UNDER RULE 5(3) OF THE RULES:

4. *It is not known as to what are the directions issued by the Permanent Committee to the Secretariat to collect information about the high ethical standards both inside and outside the court maintained by an Advocate – Applicant. Hence record to be verified to find out about the directions, if any, issued by Permanent Committee.*

4.1. *Permanent Committee failed to identify the sources from which the necessary data and information have to be collected, compiled and presented in respect of each Applicant so that the Committee can know about the antecedents of an Applicant. Hence the Permanent Committee failed to adhere to the requirements of R.5(3) of the Rules which is the primary duty and such failure reflects the causal manner in which the Permanent Committee has functioned and accordingly rest of the proceedings are vitiated.*

4.2. *In fact scheme of Rules provides for the procedure for designation, interalia providing for inviting suggestions/ views of other stake holders to the proposed designation. Then who are the stake holders identified by the Permanent Committee to invite suggestions or views in the matter. Then from the Secretariat will collect information or invite suggestion or view. This is clear from the Notification Dtd:01.09.2018 as per ANNEXURE-F. This Notification does not specify the stake holders who can their suggestions or views.*

4.3. *In fact this runs counter to guidelines stipulated by the Supreme court in para 73.4 of the judgement. The SC has said "the source(s) from which information / data will be sought and collected by the Secretariat will be has decided by the Permanent Committee". The concerned stake holders such as the Bar Counsel, Advocates Association, Legal Services Authority, Police, Litigants are not specified by the Committee and as such very Notification dtd: 1.9.2019 is bad and has vitiated all further proceedings.*

MANDATORY PROCEDURE CONTEMPLATED UNDER RULE 6 FOR DESIGNATION IS BLATENTLY VIOLATED

5. *In the absence of Permanent Committee not deciding and declaring the stake holders in the*

matter, how the Secretariat has collected information stipulated by the Supreme Court in para 73.4 are collected. R.6(2) contemplates duties of the Secretariat on receipt of the application or proposal for designation of an Advocate as an Sr. Advocate. The Secretariat is required to compile the relevant data and information with regard to the –

(i) Reputation

(ii) Conduct

(iii) Integrity of the Advocate.

(iv) Participation in pro-bono work.

(v) Reported cases or the cases involving the questions of law in which an Applicant Advocate had appeared and actually argued during the last 5 years.

5.1. *When the Permanent Committee failed to identify the sources from which the necessary data and information are to be collected compiled and presented, how the Secretariat would be able to collect such data and as such it appears that the Secretariat failed to collect necessary data and information in respect of the reputation, conduct and integrity of the Advocate which are the core aspects that the Hon'ble Supreme court laid down in para 73.4 of the judgement. Hence the Permanent Committee has not only violated the guidelines stipulated by the Hon'ble Supreme Court in para*

73.4 of the judgement but also the very Rules framed by the Hon'ble High Court of Karnataka incorporating the guidelines in R.6(2) of the Rules.

5.2. *It appears from the Records that the Secretariat has only compiled the data as to the reported cases or unreported cases, mentioned by the Applicant Advocate. However the Secretariat failed to compile information as to the number of cases actually argued by an Advocate involving questions of law. Thus the information presented to the Permanent Committee by the Secretariat is in blatant violation of the mandatory requirement of R.6(2) of the Rules.*

5.3. *The Permanent Committee also failed to verify whether the information compiled and presented by the Secretariat to the PC fulfils the mandatory requirements of R.6(2) or such information is inadequate which defeats the very purpose of which such requirements are stipulated under the Rules which are in consonance of the guidelines of the Supreme Court. Thus, the Permanent Committee also function in a casual manner which amounts to failure to discharge his duties in accordance with Rules. The very basis on which the Permanent Committee has considered the application is faulty and contrary to the mandate of the Supreme Court. Apart from violating the Rules made by the High*

Court, which amounts to gross violation of Rule of Law.

5.4. *The next stage is that the Secretariat shall put up the data in terms of R.6(3) & (4) of the Rules, which is contemplated in R.6(5) of the Rules. When the Committee failed to identify the stake holders and the sources from which the information to be collected, what data will have been collected by the Secretariat and put up the application for the scrutiny of the Committee and it is matter for the Hon'ble court to verify from the records.*

THE MOST IMPORTANT STAGE IS HOW THE OVERALL ASSESSMENT ON THE BASIS OF POINT BASED FORMAT PROVIDED IN APPENDIX-B IS DONE BY THE PERMANENT COMMITTEE AS CONTEMPLATED IN RULE 6(6) OF THE RULES:

6. *The crucial question in this case is the performance of the Committee in making overall assessment of each Advocate in the interview / interaction**?** Another important question is how far the Permanent Committee has assessed each candidate for 40 points for the items enumerated in Sl. No. 2 matters in APPENDIX-B?*

6.1. *In order to assess the candidates in respect of the items proved in APPENDIX-B which carry 40 points, it appears from the records that the*

Secretariat /PC has entered the details in format consisting of 21 Columns.

Column 13 relates to reported cases/ un-reported cases. The Secretariat has mentioned that number of reported/ un-reported judgements against each candidate. However, it is not known whether the judgements furnished by the candidates indicates the legal formulations advanced by the Advocate in the course of the proceedings of the case. This has to be read in the context of the provisions of R.3(2) of the Rules which stipulates that Advocate has appeared and actually argued in some reported cases or cases involving important questions of law.

WHAT HAS TO BE VERIFIED? - Whether the Permanent committee was satisfied that the Secretariat has verified the judgements furnished by the Advocates which indicate the legal formulations advanced by the Advocate and that he has actually argued such legal points by himself and not through any other Sr. Advocate. Therefore it is required for the Hon'ble court to verify the cases of atleast a few candidates that they infact satisfied these requirements under the Rules and information of the said fact is verified by the Secretariat and further verified by the members of the Permanent Committee so as to make a proper assessment to

award marks since the Permanent Committee has awarded marks.

6.2. *The next stipulation is* **–** *Pro – bono work by the Advocate.*
Column No.19 relates to Pro-bono work. It is necessary to verify that the nature of Pro-bono work done by the Advocate is verified by the PC. For example, whether the Advocate has filed Pro-bono petition or simply participated in the Pro-bono litigation appeared for the Respondents.

6.3. *Legal aid work – Column No. 15. No of legal aid work done by an Advocate is mentioned. Whether the legal aid work done by the Advocate is through Legal Aid Services Authority or a sort of Private Legal Aid, which is difficult to be rather verified. How the PC has verified these details furnished by the Advocates and from which sources? Does the records indicate these details.*

6.4. *Next item refers Domain Expertise of Advocate in various branches of Law mentioned in Column No.2 of the APENDIX-B. What details are furnished by the candidates or at least by the candidates now designated. How the Committee is satisfied as to the expertise in various branches of law? Whether expertise is enough only in one branches of law such as Family Law* ***or*** *Corporate*

Law etc.? Whether expertise in one Domain of law is sufficient for designation? What is the Yardstick adopted by PC to ascertain the Domain expertise in various branches of Law? These aspects have to verified from the records by this Hon'ble court to satisfy itself that the Rules are followed by the PC and then FC.

7. *Most important aspect is Sl.No.4 stipulation in the Appendix- i.e., Personality and suitability on the basis of interview/interaction. The assessment of Personality and suitability carrying 25 Points is the most controversial issue. The assessment of these two aspects is on the basis of interview/interaction. If that is so, how the PC which interviews or which interacts with the candidate has considered the Personality and suitability in the context of the information with regard to the reputation, conduct, integrity of the Advocate concern which are specifically laid down by the Hon'ble Supreme Court in para 73 of the case in INDIRA JAISING. Such stipulation is also the requirement of R.6(2) of the Rules.*

What is the material information provided by the Secretariat about these aspects is a matter for consideration. If the Secretariat has made available information about these aspects of the candidates, from which source they collected information and

whether the sources are identified by the PC which is the requirement u/R.5(3) of the Rules.

NOTE: Again this has to be a matter for proper verification of records by this Hon'ble court.

7.1. *The other aspect that has to be kept in mind is that the 25 Points for Personality& Suitability is on the basis of interview/interaction. But, if the interaction is only in respect of the matters mentioned in Sl.No.2 carrying 40 Points, then in what manner the Personality & Suitability can be assessed for 25 Points. It looks strange to go by interview to assess the Personality & Suitability. If such an exercise is done it totally gives up the requirements stipulated in R.6(2) with regard to Reputation, Conduct & integrity which can alone constitute the definition of personality. In other words personality includes-*

(a) Physical personality

(b) Mind

(c) Reputation

(d) Conduct and

(e) Integrity.

That is a reason explanation to R.3(1) explains the term "standing at the bar" which reads thus;

Explanation: The term "standing at the bar" means the position of eminence attained by an Advocate at

the bar by virtue of his seniority, legal acumen and high ethical standards maintained by him, both inside and outside the court.

Thus, so the terms Personality and suitability have to be understood only in the context of the definition of "standing at the bar". Again R.3(1) has to be understood in the context of important aspects that are incorporated in R.6(2) of the Rules. Accordingly, on the fusion of all these qualities can answer the Personality and suitability.

It appears either there is no information about these aspects of each candidate or no serious efforts are made by PC to gather information about these aspects relating to Personality and Suitability of a candidate. Absence of information about these aspects may virtually affect the long exercise undertaken by PC and short exercise done by FC and there is possibility that one could mislead the other. It is not possible to know exactly as to the concept of Personality and suitability that PC had in mind, whether it is in the context of stipulation u/R.3(1) explanation R/w. R.6(2) stipulation or only on the basis of interview / interaction has mentioned at Sl. No.4 of Appendix-B. In case the parameters of r.3(1) R/w. r6(2) given a go by and no importance is given for those aspects but assessing the Personality and Suitability on the basis of interview.

Such an exercise is only a sham and totally ignores the very purpose for which the Hon'ble Supreme Court introduce a set of guidelines. Therefore, the Hon'ble Court has to keep in mind the dictum of the Supreme Court mentioned in Para 70 thus "the sole yardstick by which we propose to introduce a set of guidelines to govern the matter is the need for maximum objectivity in the process so as to ensure that it is only and only the most deserving and very best who would be bestowed the honour and dignity. The credentials of every Advocate whose seeks to be Designated as a Sr. Advocate or whom the Full Court suo-moto decides to confer the honour must be subject to an utmost strict process of scrutiny living no scope for any doubt and dissatisfaction in the matter".

7.2. *In order to appreciate the above submission, kindly think of a candidate who has excellent domain expertise in various branches of Law and he has a number of reported and unreported judgements to his credit, but if his conduct is not good, his reputation is not good and integrity is doubtful, what is the use of his domain expertise and the number of reported judgements to his credit. How such candidate fulfils the stipulation of r.3(1) and r.6(2) of the Rules. It appears the PC has totally failed to take note of the mandatory requirement of the Rules in*

the context of the dictum laid down in para 70 of Indira Jaising case and which are meticulously stipulated in the Rules, appears to have made the assessment of Personality and Suitability on the basis of interview. PC cab boost up the personality of any candidate or cut down his personality for reasons known to them which need not be explained and by following such a faulty procedure the PC failed to ensure that it is only and only most deserving and the very best who would be bestowed the honour and dignity. Therefore, its proceedings are not free from doubt or not satisfactory which violates Para 73.4 of the Apex Court judgement which has introduced the litmus test by incorporating relevant data and information with regard to the reputation, conduct and integrity of the Advocate. Therefore, with a great respect it is submitted that a most intelligent Advocate whose reputation, conduct and integrity are a matter of doubt cannot bestowed the honour and dignity of the distinction as Sr. Advocate who may be a little less than a Judge of a Constitutional Court who adorn the seat of Justice just 3 ft. about the ground.

7.3. *If the Hon'ble court verifies the proceedings of the PC, the favoured one have secured very high marks close to 25 Points whereas many candidates known for their eminence and whose reputation,*

conduct and integrity are not doubtful are put down with less marks being awarded. It is possible to contend that the proceedings of PC may not be fair. It is also possible for members of the bar knowing about the antecedents of candidates expressed shock about the selection of particular candidates and express their dismay about the non-selection of some deserving candidates which has created dissatisfaction about the so called selection and non-selection and naturally bar feels that the PC was not fair in the matter.

DISCRIMINATION:

8. *R.4 providing for motion for designation interalia provides the designation of an Advocate as a Sr. Advocate may be consider on the written proposal made by-*

(a) *The Chief Justice or any sitting Judge of the High Court of Karnataka;*

OR

(b) *The Advocate General for the State of Karnataka;*

OR

(c) Two Sr. Advocates practicing in the High Court of Karnataka.

8.1. *The Hon'ble Justice L. Narayanswamy (as he then was and now Hon'ble Chief Justice, Himachal Pradesh High Court) proposed a name of one Advocate. He is not designated. That candidate was Addl. Advocate General for 2 terms and has written no. of books on Law. His interview mark is 8.60 out of 25. It is unpleasant to mention, does the Hon'ble Justice recommended the name of an undeserving Advocate. It is not out of place to mention that the said Hon'ble Justice has been a member of the collegium in the High Court and able to identify many good Advocates to become the Judges of this Hon'ble Court and as such he could not have made a wrong proposal. It is not known whether Hon'ble members of PC had any prejudice against the said Hon'ble Judge.*

8.2. *Likewise Hon'ble Justice R. Budhial made a written proposal for 1 candidate who has been practicing as an Advocate from 1984. He is not selected. Does it mean that the Hon'ble Judge made a wrong assessment of an Advocate for the designation. The said Judge is one of the greatest judge of this Hon'ble court who maintained high grade of integrity. Is it possible for such a Judge to make a wrong proposal. We do not know what opinion the Hon'ble PC had against the said Hon'ble*

Judge ***or*** *against the candidate who is awarded only 7 marks in the interview.*

8.2(a). *Suppose u/r.4 Hon'ble Chief Justice is competent to make a proposal and he is also the Head of the Permanent Committee. In that event any candidate sponsored by the Hon'ble Chief Justice is either selected or not selected, may become a subject of controversy. Likewise, 2 Senior most Judges who are also the members of the Permanent Committee is competent to sponsor. Suppose they make proposal for 4-5 candidates. In that event should all such candidates be selected. In that even will a member of the Bar who is nominated to the Committee and the AG who is also a member, will in all probability support the candidates of such Judges and also see that the candidates sponsored by them are also selected. These are the aspects that are being debated in the Bar which can have answer only from the Bench. One cannot understand what is the yardstick employed by PC to select 18 candidates when there was absolutely no information about their reputation, conduct and integrity compared to those who are left out in the race.*

8.3. *The Hon'ble Advocate General who is a member of the Permanent Committee, had made written proposal for 6-7 candidates. It is said in the*

SO filed by the High Court Administration that he recuse himself when candidate sponsored by him was interviewed.

When 2 candidates sponsored by 2 Hon'ble Judges have not been selected as they did not deserve the designation, it has to be taken that they did not sponsor a proper candidate when 4 candidates sponsored by Advocate General have been selected by PC, does it mean that he was more efficient in making assessment of candidates than the Hon'ble Judges before who Advocates appear regularly.

8.4. *In this context it has to be observed that it is just and proper that the members of Permanent Committee including the AG may not propose the names of the candidates for designation. Otherwise it given room for all sorts of comments.*

IGNORING PROVISIONS OF R.3(1) & R.6(2) OF THE RULES MAY BE FATAL TO THE SELECTION:

9. *The reputation, conduct and integrity and also domain expertise of candidates who are awarded less marks, may not be less than others and the reputation, conduct and integrity of those who are given high marks in the interview may not be more. Who will keep up the reputation of this institution is only the object and for that purpose only those*

requirements are stipulated. But in the absence of information about these aspects about the candidates is fatal and entire proceedings of PC and FC are vitiated.

PROCEEDINGS OF PC ARE VITIATED DUE TO THE ACTIVE PARTICIPATION OF HON'BLE JUSTICE R.S. CHAUHAN, SENIOR JUDGE AND MEMBER OF THE PERMANENT COMMITTEE:

10. *The assessment process for designation commenced from 22nd October and ended on 31st October, 2018. While the interviews were going on there was a thick rumour that Hon'ble Justice R.S. Chauhan is been transferred to Hyderabad High Court and that he was in a hurry to rush through the interviews, probably to take credit of designating a few.*

10.1. *Govt. of India, Department of Justice vide its Notification No.K-11017/07/2018-US-1 dtd:08.11.2018 transferred Hon'ble Justice Raghvendra Singh Chauhan, Judge of the Karnataka High Court as a Judge of Judicature High Court of Hyderabad.*

10.2. *In view of this Notification he has ceased to be a Judge of the Hon'ble Court w.e.f 08.11.2018, in view of the provisions of A.217(1)(c) of the Constitution of India. On* ***or*** *after issue of*

Notification dtd:08.11.2018, he could not have functioned as a Judge of Karnataka High Court not only on Administrative side but also on Judicial side. The time given in the Notification of Transfer to assume charge of his office in the High Court of Hyderabad on ***or*** *before 22.11.2018 is only for the purpose of preparing himself to move out from Karnataka to Andhra Pradesh and assume charge as a Judge of that court. The said date given in the Notification does not enable him to function as a Judge till such date. After transfer time is given for him to wind up his stay at Bengaluru and move out of Bengaluru. Unfortunately, the said Hon'ble Justice continued to sit in his Chambers/Court Room in the High Court of Karnataka and particularly attending to selection of candidates for Designation of Sr. Advocates, for reasons best known to him. Bar knows the reasons but such reasons may not be disclosed in the interest of the institution. His functioning is less said, not only to save him but what is more important is saving the honour and dignity of this institution.*

10.3. *The Permanent Committee meeting is held on 11.11.2018 at 6 PM. It was a Sunday and not Monday as mentioned in the meeting proceedings of PC. This itself reflects the proceedings of PC which was held in hurry. Hon'ble*

Justice R.S.Chauhan under orders of Transfer participated in the PC meeting. Propriety demands that he shall not discharge any powers and function as a Judge of Hon'ble High Court of Karnataka on or after 08.11.2018. Hence proceeding of PC are vitiated. Rumors spread in the corridors that the said Hon'ble Judge is participating only for a sake of a few candidates. Whether it is true or not is not a matter for the Bar but his propriety in participation in the proceedings gives room for such undesirable talks. Justice has to be done and also Justice is seen to have been done is the Principle of Rule of Law. But who has to follow such principles, is the concern for the Bar and Bench.

10.4. *It appears on 11.11.2018 meeting only PC completed the awarding of final marks. When Hon'ble Judge is under Transfer who is also a Sr. Judge and suppose to become the Chief Justice of some other High Court in the near future, probably it was embarrassing for other members of the Permanent Committee to go against him and willingly or unwillingly others have to sail with him, either being conscious or unconscious about the effects on its proceedings. It is a strange that other members of the Permanent Committee including the Chief Justice who headed the committee allowed such things to happen. It was again a talk in the Bar*

that he dominated the proceedings and other members have no option but to go by his wish. Normally a Judge will not embarrass another Judge under any circumstance and may protect his interest even it seriously affect the interest of this institution.

NEXT PC MEETING ON 12.11.2018 AT 8 P.M.

11. *The PC after its meeting on 11.11.2018, held its next meeting on 12.11.2018 (Monday). The subject for meeting is "approval of point based assessment statement and merit list".*

Resolution **–** *Place it before CJ.*

In both the meeting of 11.11.2018 and 12.11.2018 Hon'ble Justice R.S.Chauhan who ceased to be a Judge of High Court of Karnataka participates, without any propriety. His very presence and participation in the PC meeting have vitiated the proceedings which has marred the high reputation of the Hon'ble High Court of Karnataka in the country.

FULL COURT MEETING ON 15.11.2018:

12. *The Permanent Committee after completing its exercise in hurry on 11.11.2018 and 12.11.2018, placed the entire matter before the Full Court which had its meeting on 15.11.2018. Even in the Full*

Court meeting Justice R.S.Chauhan participated. It appears from the records that the Full Court had deliberations about the proceedings of the Permanent Committee for Designation of Sr. Advocates. It appears Judges, supposed to be experts in Law did not raise any objection about the participation of Justice R.S.Chauhan in the Full Court. Possibility it was embarrassing for them to raise such objection knowing his future positions.

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14.1. *When 68 candidates participated in the process for designation, how the PC considered all the 68 candidates merit on 11.11.2018 meeting by awarding final marks. How the matter was considered by PC and on how the very next day on 12.11.2018 at 8 PM the PC approved the point based assessment statement and merit list and passed the resolution, is a matter which cannot be comprehended by the members of the Bar who have no access to the records. They only had expressed reasonable apprehensions about the activities and the proceedings of the PC. It is often said Justice hurried is Justice buried.*

14.2. *Full Court which approved the merit list submitted by PC appears to have not devoted just and reasonable time to consider such an important*

task in the light of the judgement of Hon'ble Supreme Court in Indira Jaising and the Karnataka Rules. A demand made by a few Hon'ble Judges, perhaps 3 Judges as per the records, to consider the matter in an appropriate manner, did not find favour with the rest of Judges, who probably did not consider fit to exercise their wisdom, not to rush through the list but to have proper deliberations. Probably the Hon'ble Judges to approve the list of 18 for designation to honour a Judge who otherwise could not have participated in the proceedings of the PC & FC. The result is issue of Notification on 16.11.2018. On the day on which farewell was given to Hon'ble Justice R.S.Chauhan by the Full Court. The result thereafter is commotion in the Bar and emotion for Justice is made by way of Public Interest Litigation, which could have been avoided by the High Court Administration had it followed Rule of Law and thought of the consequences of their action.

UNFAIR ATTITUDE OF HIGH COURT ADMINISTRATION IN NOT PROVIDING DOCUMENTS INFORMATION UNDER RTI ACT:

15. *When the petitioner and other sought for information under RTI Act about the proceedings of the Permanent Committee etc., State Public information High Court of Karnataka has issued*

endorsement dtd: 12.12.2018 as per ANNEXURE-K1, endorsement dtd:13.12.2018 as per ANNEXURE-K3, rejecting applications on flimsy ground petitioner constrained to challenge such endorsements by filing W.P.Nos.57549-551/2018 and W.P. No.55977/2018 which are pending before this Hon'ble Court. Even in those petitions the High Court Administration has taken up untenable stand.

LEGITIMATE EXPECTATION OF THE BAR BELIED:

16. *Legitimate expectation of the candidates that their cases will be considered in accordance with the Supreme Court guidelines and the Rules is defeated by the Hon'ble High Court on its Administrative side.*

16.1. *The legitimate expectation of the members of the Bar that the process of selection will be fair and free from other considerations and the proceedings will be in accordance with the Rules is also defeated. At all stages the Permanent Committee has performed its duties in an arbitrary way and as given a go by to all the important aspects stipulated under the Rules which are pointed out supra. Members of the Bar thought that designation of Advocates was at the whim and fancy of High Court Administration when Rules were not there, which lead to series of litigations in respect of earlier Notifications*

designating Advocates as Sr. Advocates. Ultimately the Hon'ble Supreme Court in the matter of India Jaising which has been translated into Rules stipulating very high standards to enhance the standards of this institution. Even after Rules are made things are not better and the designation of Sr. Advocates under the impugned notifications has become a matter of litigation and the designation process has not been received well by the members of the Bar. Their only hope is that the High Court on its Judicial side will set right the faults and prevent any defaults in the matter."

31.2 The further part of the written submission refers to what Mahakavi Kalidasa said and extracts of certain decisions of the Apex Court on importance of judiciary and administration of justice. The same are wholly irrelevant to the controversy in hand, which does not mean that what we have reproduced is relevant. Therefore, we are not reproducing the same.

The written submissions end with following portion:

"20. '*SATHYAMEVA JAYATHE'*

Wherefore it is prayed that this Hon'ble Court may be pleased to quash the Notification dtd:16.11.2018

> *(ANNEXURE-H) designating 16 Advocates as Sr. Advocates, in the interest of dignity of this institution and justice. If necessary, appropriate directions may be issued to reconsider all the 68 applicants strictly in accordance with the stipulations in the Rules keeping in mind the mandatory requirements of R.3(1) and R.6(2) of the Karnataka High Court Designation of Senior Advocates Rules, 2018 in making assessment of the applicants in respect of the specifications made in APPENDIX-B of the Rules, in furtherance of Real Justice."*

The above paragraphs are verbatim reproduction of the written submissions made by the learned counsel for the petitioners in W.P. No. 35595 of 2019.

V. FURTHER SUBMISSIONS OF THE PARTIES:

32. In Writ Petition No. 7388 of 2019, the petitioner appearing in person had also applied for conferment of Senior Advocates designation. His case was not favourably considered by the Full Court. His contention is that the Permanent Committee, while awarding points based marks to him, totally ignored the contribution made by him to the society and the assistance given by him to the Court as an Advocate in several public interest

litigations. His submission is that there was no justification for the Committee to award only 2.80 points out of 25 on the basis of the interview/interaction. His submission was that even while assigning/allotting marks out of 40 points, the number of cases cited by the petitioner including two constitutional bench decisions of the Apex Court in which the petitioner has appeared have not been considered. He urged that *pro bono* work done by him by filing several public interest litigations has not been considered while assigning the points. In short, his contention is that in his case, proper assessment has not been made by the Permanent Committee.

33. The learned Senior Counsel appearing for the first and second respondents (High Court and the Permanent Committee) pointed out that the Permanent Committee had conducted interviews/interactions from 22nd October, 2018 to 31st October, 2018 for long hours and that is how in its meeting held on 11th November, 2018 the Permanent Committee directed its Secretariat to make tabulation of the points assigned to the individual candidates. He placed reliance on the decision of the Apex Court in the case of ***Madanlal and others -vs- State of***

Jammu and Kashmir and others[5], and submitted that this Court cannot sit over in appeal and re-assess the merits of the candidates. He placed reliance on the decision of the Apex Court in the case of ***Union of India and others –vs- Kali Dass Batish and another[6].*** He urged that the entire exercise was done by the Permanent Committee consisting of four high constitutional functionaries and therefore, the scope of judicial review is considerably narrow. He submitted that there is no contradiction between what is stated in the statements of objection of the first respondent and what is stated in the communication dated 11th January, 2018.

34. The learned counsel appearing for the third respondent submitted that the petitioners who had not applied for designation have no *locus standi* to challenge the process adopted by the Permanent Committee and the Full Court. He submitted that the stakeholders may have the right to submit their views or suggestions but it does not mean that such stakeholders are having any right to challenge the entire process of designation of Senior Advocates, only because their views and suggestions are

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[5] (1995) 3 SCC 486
[6] (2006) 1 SCC 779

not accepted. He relied upon the decision of the Division Bench of Kerala High Court in the case of ***M.K. Sasidharan –vs- Hon'ble Chief Justice of India[7].*** He pointed out that the Kerala High Court held that the transfer order issued by the President of India under Article 222 (1) is only a direction to the transferred Judge to lay down his office and assume his office in the new High Court and till he assumes the charges of his office in the transferee High Court, he continues to be a Judge of the High Court to which he was originally appointed.

35. The learned counsel appearing for the fourth to sixth respondents adopted the submissions of the learned counsel appearing for the first and second respondents.

36. The learned Senior Counsel appearing for the ninth respondent also adopted the arguments of first and second respondents. In addition, he relied upon a recent decision of the Apex Court in the case of ***Municipal Council Neemuch –vs- Mahadeo Real Estate and others[8].*** He submitted that exercise of power of judicial review of the High Court is warranted only when impugned notification / decision is vitiated

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[7] (1996) SCC Online Kerala-167

[8] Civil Appeal No.7319-7320 of 2019 decided on 17th September 2019 = (2019) 10 SCC 738

by an apparent error of law or when the error is apparent on the face of the record is self evident. He submitted that the power of judicial review can be exercised only when the decision impugned is so arbitrary and capricious that no reasonable person would have ever arrived at it. In addition, such a decision must have led to manifest injustice.

37. The learned Senior Counsel appearing for the sixteenth respondent also substantially adopted the submissions made by the other learned counsel representing the private respondents. When the attention of the learned Senior Counsel was invited by us to clause (4) (f) of paragraph 3.19 containing certain allegations made against a very respectable senior Advocate of the Bar who was incidentally the father of the fourth petitioner in W.P.No. 5368 of 2019 and when this Court pointed out to him that on an earlier occasion an opportunity was given to the sixteenth respondent to withdraw the same, the learned counsel has stated that he has no instructions to withdraw the same. When we invited attention of the learned counsel to Annexure-R2 which are the printouts of certain messages on what's App platform, he stated that the same are annexed as per the instructions of his client.

38. The learned counsel appearing for twelfth respondent also made detailed submissions. He relied upon decisions of the Apex Court in the case of ***Union of India –vs- Sankalchand Himatlal Sheth and another*** (Supra) and in the case of ***K. Ashok Reddy –vs- Government of India***[9]. He submitted that when the discretion was given to a Selection Committee, recommendations made by the Committee cannot be challenged except on the ground of *mala fides* or violation of statutory Rules and that the Court cannot act as an appellate authority. He relied upon a decision of the Apex Court in the case of ***Union Public Service Commissioner –vs- M. Sathiya Priya and others***[10] in support of his submission that while considering the prayer for a review of administrative action, the Court has to confine itself to the question of illegality and the Court cannot act as Court of appeal. He relied upon the well know decision of the Apex Court in the case of ***Tata Cellular –vs- Union of India***[11].

39. The learned counsel appearing for fifteenth respondent relied upon the same decision of the Apex Court in the case of

[9] (1994) 2 SCC 303
[10] (2018) 15 SCC 796
[11] (1994) 6 SCC 651

Union of India –vs- Sankalchand Himatlal Sheth and another *(supra)****.*** He submitted that even assuming that one of the selected candidates was closely associated with a member of the Permanent Committee, it cannot be inferred that the member was biased in favour of selected candidate. He relied upon a decisions of the Apex Court in the case of ***Dalpat Abasaheb Solunke and others –vs- Dr. B.S. Mahajan and others***[12] and also in the case of ***Jagat Bandhru Chakraborti –vs- G.C. Roy and others***[13]***.***

40. We have also heard the submissions canvassed by the petitioners by way of rejoinder which are already recapitulated while we have referred to the submissions of the counsel for the petitioners/petitioner appearing in person.

41. <u>CONSIDERATION OF FACTUAL ASPECTS:</u>

As per the order of this Court, an inspection of the relevant records was given to the parties and the members of the Bar. Some of the parties have filed further pleadings based on the inspection of the documents. Therefore, we must refer to the said documents. The documents show that the meeting of the

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[12] (1990) 1 SCC 305
[13] (2000) 9 SCC 739

Permanent Committee consisting of the then Hon'ble the Chief Justice, Hon'ble Shri Justice H.G. Ramesh, Hon'ble Shri Justice Raghvendra S. Chauhan, Shri. Uday Holla, the then learned Advocate General and Shri. Vijay Shankar, Senior Advocate was held at 06.00 p.m on 11th November, 2018. The Resolution passed on that day records that for awarding points for the number of years of practice, the period shall be reckoned from the date of enrolment till the last date fixed for submission of the applications. The Resolution further records that final awarding of marks has been completed and the Permanent Secretariat was directed to get the tabulation of the marks carried out confidentially by 12th November, 2018. On 12th November, 2018, a meeting of the Permanent Committee was held at 8.00 p.m in which all the five members were present and final compilation of the statements of points awarded to respective candidates and the final statement of points based assessment of the applicants was approved and the said final statement of point based assessment was ordered to be placed before the Chief Justice for further directions.

42. It appears that the Full Court meeting was held at 5.00 p.m on 15th November, 2018. The subject of consideration of final statement of point based assessment of the applicants/advocates for being designated as Senior Advocates in accordance with the provisions of Senior Advocates Rules was placed at item No.3 on the agenda.

43. The statement of points based assessment which was placed before the Full Court is also a part of the documents of which inspection was provided. Even the statement of compiled data and information with regard to the Advocates whose proposals were received for designation is also a part of the record. The data compiled are in 20 columns under various heads such as date of birth, date of submission of the application, date of enrolment as an Advocate, number of years of practice, reported and un-reported cases, the legal aid work done, details of the publications, participation in seminars or conferences, association with faculty of law, pro-bono work and suggestions and views received from stakeholders. The consolidated statement of marks was placed before the Full Court, which is styled as "Statements of point based assessment

in respect of designation of Senior Advocates" which contains the details of the points assigned by each member of the Permanent Committee to individual candidates and average of the points assigned by them out of 100. The points have been assigned to all 68 candidates except the candidate at Sl. No. 59 against whose name the word 'withdrawn' is mentioned.

44. For the sake of convenience, we must incorporate the Full Court Resolution in this judgment, because there is nothing confidential about it. The Full Court Resolution dated 15th November, 2018 on the subject reads thus:

> *"Extract of the proceedings of the meeting of the Full Court held on Thursday, the November 15, 2018, at 5.00 pm in the Conference Hall of the Principal Bench of the High Court at Bengaluru, through Video Conference with Dharwad and Kalaburagi Benches.*
>
> ***Item No.3*** *: To consider the final statement of Point Based Assessment of the applicant-Advocates for being designated as Senior Advocates as per the High Court of Karnataka (Designation of Senior Advocates) Rules, 2018.*
>
> ***RESOLUTION*** *(a) After taking note of the norms/guidelines formulated by the Hon'ble Supreme Court of India in paragraphs 73.1 to 73.11 of the decision in Indira Jaising vs Supreme Court of India, through Secretary General & Ors. (2017) 9 SCC 766 as also the High Court of Karnataka (Designation of Senior Advocates) Rules, 2018 ('the Rules') and the extensive exercise carried out by the Permanent*

Committee, the Full Court has deliberated over the issue of designation of Senior Advocates as per the statement of Point Based Assessment provided by the Permanent Committee.

(b) The Full Court has also taken note of the fact that designation of Senior Advocates in High Court of Karnataka has not been carried out for last more than three years and at present, there are 65 advocates who are designated as Senior Advocates by the High Court of Karnataka. The Full Court has further taken note of the fact that one of the parameters in the Point Based Assessment is of publication by the applicant-advocate that carries 15 points out of 100, but a substantial number of practising advocates may not be having authentic publication to secure points on that score.

(c) After taking into the account the cumulative effect of all the relevant factors and the points awarded to the applicant-advocates in Point Based Assessment, the Full Court has resolved to designate the following advocates as Senior Advocates:

Sl. No	*Name of the Advocates Sriyuths/Smts:*	*Date of Enrolment*
01	*R.V. Subramanya Naik (RVS Naik)*	*17.01.1975*
02	*Gurumath Gangadhar Rudramuni Sharma*	*03.06.1983*
03	*R.V. Prasad*	*14.03.1984*
04	*Hasmath Pasha*	*30.05.1984*
05	*S. Susheela*	*12.03.1986*
06	*T.S. Amar Kumar*	*30.08.1989*
07	*Gurudas Shyamrao Kannur*	*21.09.1990*
08	*Kuloor Arvind Kamath*	*11.06.1993*
09	*K.N. Phanindra*	*20.08.1983*
10	*G. Shivadass*	*28.02.1994*
11	*Arun Kumar K*	*08.07.1994*
12	*Srinivasa Raghavan V*	*07.05.1997*
13	*A.S. Ponnanna*	*28.08.1997*

14	*Sandesh J. Chouta*	*10.09.1997*
15	*Lakshmy Iyengar*	*09.01.1998*
16	*M. Nagaprasanna*	*01.08.1998*
17	*Jayna Kothari*	*27.08.1999*
18	*Shankar A*	*13.12.2002*

(d) It is further resolved to defer final decision in relation to the following applicant-advocates for the present:

Sl. No	*Name of the Advocates Sriyuths/Smts:*	*Date of Enrolment*
01	*Sri. Kiran S. Javali*	*12.03.1982*
02	*Sri. Suresh S. Lokre*	*24.09.1986*

(e) Apart from the above, the Full Court has also resolved that the following applicant-advocates may not be designated as Senior Advocates for the present, but their cases would be considered as such deferred cases, who may again apply in the next exercise of designation along with the other applicants, without operation of the bar of two years under Rule 6(10) of the Rules:

Sl. No	*Name of the Advocates Sriyuths/Smts:*	*Date of Enrolment*
01	*T. Sheshagiri Rao*	*12.03.1976*
02	*S.P. Kulkarni*	*27.08.1976*
03	*Puthige R. Ramesh*	*23.09.1977*
04	*M.R.C. Ravi*	*16.03.1979*
05	*A.G. Shivanna*	*29.06.1979*
06	*B.K. Sampath Kumar*	*09.11.1979*
07	*A. Keshava Bhat*	*22.02.1980*
08	*H.S. Chandramouli*	*29.05.1981*
09	*Basavaraj Veerasangappa Sabarad*	*16.07.1982*
10	*B.C. Thiruvengadam*	*18.02.1983*
11	*Vighneshwar S. Shastri*	*03.06.1983*
12	*Bhagwat M.S*	*20.12.1984*

13	*R.S. Ravi*	*17.06.1987*
14	*Basavaraju S*	*07.09.1988*
15	*Ajesh Kumar Shankar*	*22.11.1996*

(f) The other applicants would be considered as not designated as Senior Advocates; and their cases will be covered by Rule 6(10) of the Rules.

(g) Hon'ble Shri. Justice S.N. Satyanarayana, Hon'ble Dr. Justice H.B. Prabhakara Sastry and Hon'ble Shri. Justice S. Harish Kumar have dissented and have opined that the proposed names should be put to voting. Hon'ble Shri. Justice John Michael Cunha has dissented only with regard to deferment of the applicants while giving them relaxation over the operation of Rule 6(10) of the Rules."

(Underlines supplied)

45. We must note here that the inspection of the originals of the relevant documents was provided to the parties as per the directions of this Court dated 1st August, 2019. We have perused the records maintained by the Registry containing the names of the advocates/parties, the date of inspection of the records and their respective signatures. The inspection of the record was provided to the Advocates and to the parties on 6th and 7th August, 2019 and on 28th August, 2019. The order sheets of the writ petitions will show that none of the parties made any grievance regarding the failure to provide proper inspection. On the contrary, we must record here that many

members of the Bar expressed satisfaction that the inspection of the original documents was provided to them.

VII. THE ANALYSIS AND INTERPRETATION OF SECTION 16 OF THE ADVOCATES ACT, THE DIRECTIONS ISSUED BY THE APEX COURT IN THE CASE OF INDIRA JAISING AND THE SENIOR ADVOCATES RULES FRAMED BY THIS COURT IN THE LIGHT OF SUBMISSIONS.

46. We must, at the outset, note that we have dealt with the submissions without going into the issue of *locus* standi of petitioners in two writ petitions to maintain the writ petitions in the nature of a public interest litigation. On the basis of the submissions made across the Bar, we must make analysis of the relevant provisions such as Section 16 of the Advocates Act, the directions issued by the Apex Court in the decision in the case of ***Indira Jaising*** and the Senior Advocates Rules. In the light of the submissions made, we are interpreting the said provisions. While doing so, though we are dealing with some of the submissions made before us, some specific submissions made are dealt with separately.

Advocates Act:

47. First, let us deal with the provisions of Section 16 of the Advocates Act,1961. Sub-section (2) of the said Act confers

power upon the Apex Court or a High Court to designate an Advocate, with his consent, as a Senior Advocate. The Condition precedent for designating of an Advocate as Senior Advocate is the formation of an opinion by the Apex Court or a High Court, as the case may be, that by virtue of his ability, standing at the Bar or special knowledge or experience in law, he is deserving of such distinction. Thus, as for as the High Court is concerned, the power is conferred on the High Court which can be exercised only by the Full Court. Section itself does not contemplate an application being made either by an Advocate concerned or any other Senior Advocates on his behalf for grant of designation as a Senior Advocate. Sub-Section (2) of Section 16 clearly indicates that the concerned High Court, even on its own, can grant such designation to an Advocate as a Senior Advocate with his consent. The sub-section (2) of Section 16 or any other sub-sections of Section 16 do not confer any Rule making power either on the Governments or on the Courts. There are other sections which confer Rule making power.

48. Section 34 of the Advocates Act confers rule making power on the High Courts. The provision reads thus:

> ***"34. Power of High Courts to make rules – (1)*** *The High Court may make rules laying down the conditions subject to which an advocate shall be permitted to practise in the High Court and the Courts subordinate thereto.*
>
> *(1A) The High Court shall make rules for fixing and regulating by taxation or otherwise the fees payable as costs by any party in respect of the fees of his adversary's advocate upon all proceedings in the High Court or in any Court subordinate thereto.*
>
> *(2) Without prejudice to the provisions contained in sub-section (1), the High Court at Calcutta ma make rules providing for the holding of the Intermediate and the Final examinations for articled clerks to be passed by the persons referred to in Section 58AG for the purpose of being admitted as advocates on the State roll and any other matter connected therewith."*

49. Power of High Court to frame Rules governing the designation of Advocates as Senior Advocates can be traced to sub-section (1) of Section-34. Section 49 confers general powers on the Bar Council of India to make rules. But none of the clauses contained in sub-section (1) of Section 49 confer any power on the Bar Council of India to frame the rules governing the designation of the Advocates as Senior Advocates. Obviously, said power cannot be conferred on the Bar Council of India, as the Bar Council of India cannot regulate what the Full Court of a High Court can do.

Section 57 of the Act which confers powers on the Bar Council of India to make rules is not relevant. Section 60 of the Advocates Act reads thus:

> ***"60. Powers of Central Government to make rules -*** *(1) Until rules in respect of any matter under this Act are made by a State Bar Council and approved by the Bar Council of India, the power to make rules in respect of that matter shall be exercisable by the Central Government.*
>
> *(2) The Central Government after consultation with the Bar Council of India may, by notification in the Official Gazette, make rules under sub-section (1) either for any State Bar Council or generally for all State Bar Councils and the rules so made shall have effect, notwithstanding anything contained in this Act.*
>
> *(3) Where in respect of any matter any rules made by the Central Government under this section for any State Bar Council, and in respect of the same matter, rules are made by the State Bar Council and approved by the Bar Council of India, the Central Government may, by notification in the Official Gazette, direct that the rules made by it in respect of such matter shall cease to be in force in relation to that Bar Council with effect from such date as may be specified in the notification and on the issue of such notification, the rules made by the Central Government shall, accordingly, cease to be in force except as respects things done or omitted to be done before the said date."*

50. However, none of the above sections confer a rule making power on the Government of India to frame the Rules regulating

or governing the designation Advocates as Senior Advocates. This has to be borne in mind in view of the specific prayer made in W.P.No. 6380 of 2019 seeking a direction against the Central Government to frame Rules governing the designation. Thus, it is only sub-section (2) of Section 16 of the Advocates Act confers exclusive powers on the Supreme Court and the High Courts to designate an Advocate as Senior Advocate and sub-section (1) of Section 34 confers powers on the High Courts to make rules laying down conditions for designation of an Advocate as a Senior Advocate.

Directions (Guidelines/Norms) laid down by of the Apex Court in the case of Indira Jaising:

51. Now, we turn to the dictum of the Apex Court in the case of ***Indira Jaising (supra).*** We have already quoted the relevant paragraphs of the said decision which lay down the guidelines to confer the designation as Senior Advocates. Paragraph-73 of the said decision directs that the guidelines laid down in paragraphs 73 to 73.11 would govern the exercise of designation of an Advocate as a Senior Advocate by the Apex Court as well as all the High Courts. The direction in paragraph-73 is that the existing guidelines/norms of the High Courts shall be suitably

modified to make it consistent with the directions of the Apex Court.

52. The first direction is regarding constitution of a Permanent Committee in the name and style of **'Committee for Designation of Senior Advocates (**for short "the Permanent Committee or the Committee"). In case of High Courts, the said Permanent Committee is headed by the Chief Justice. It consists of the Chief Justice, two senior most Judges of the High Court, the learned Advocate General and the 5th member is a member of the Bar who is nominated by the other four members. Thus, the Chief Justice, two senior most Judges and the Advocate General shall always be the members of the Permanent Committee by their designation and therefore, they are *ex-officio* members of the Committee and they cannot be replaced at all. Though paragraph 73.1 provides that all matters relating to designation of Senior Advocates in all the High Courts are to be dealt with by the Permanent Committee, the said direction will have to be read with the other directions which specify and lay down the functions of the Permanent Committee. The direction in paragraph 73.1 cannot be read in isolation as it

is a part of a comprehensive scheme contained in paragraphs 73.1 to 73.11. As held in the subsequent part of this judgment, the duty of the Permanent Committee is to make point based overall assessment of all the candidates. Thus, even the sub-rule (1) of Rule 5 of the Senior Advocates Rules will have to be read accordingly. Therefore, the challenge to the validity of sub-rule (1) will not survive.

53. The Chief Justice of the High Court is conferred with the power to set up the Permanent Secretariat in consultation with other members of the Permanent Committee. The applications received for designation of Senior Advocates including the written proposals if any, made by the Hon'ble Judges are required to be submitted to the Secretariat and thereafter, the Secretariat is required to compile the relevant data and information with regard to (a) the reputation, conduct and integrity of the concerned Advocates, (b) their participation in pro bono work, (c) reported judgments in which the advocates concerned have appeared and (d) the number of such judgments during the last five years. The manner in which such information

and data will be collected by the Permanent Secretariat is to be decided by the Permanent Committee.

54. Clause (5) of paragraph-73 is material which requires publication of the proposals of designation of Advocates on the official website of the concerned High Court for inviting the suggestions/views of the stakeholders on the proposals for designation. There is some controversy about the manner in which the proposals are to be published. Clause (5) of Paragraph-73 cannot be read as a statute enacted by the Parliament or the State Legislature. Even if the names of the Advocates who have applied for conferment of designation as Senior Advocates are published on the official website, it can be treated it as a substantial compliance, as the object of publishing the proposals is to provide an opportunity to those stakeholders who knew the concerned Advocates-applicants to make suggestions and express their views about such applicants. After compilation of such views/suggestions submitted by the stakeholders and all other information as sought for by the Permanent Committee is collected in respect of the candidates, the permanent Secretariat is required to put up the cases before

the Permanent Committee. Moreover, Rule 6(4) of the Senior Advocates Rules provides that the Permanent Committee may, if considered it necessary, can seek response of the candidates on the views and suggestions. This power can be exercised in a case where the stakeholders have made very serious allegations against a candidate. This provision is based on rules of fairness, and, therefore, cannot be said to be inconsistent with the scheme of directions issued in the case o ***Indira Jaising*** (supra).

55. Clause-7 of paragraph-73 requires/directs the Permanent Committee to examine each case in the light of the data provided by the Secretariat of the Permanent Committee. The first part of clause-7 of Paragraph-73 clearly indicates that the Permanent Committee shall interview the advocates concerned and thereafter make their 'overall assessment' and assign the marks/points as specified in item No.1 to 4 in the table in clause-7 of paragraph-73. The first item in the table in clause-7 provides for assigning 10 points to the advocate who has put in 10-20 years of practice from the date of his enrolment and 20 points to an advocate who has put in more than 20 years practice from the

date of his enrolment. There is no difficulty at all for assignment of points for number of years of practice as a mathematical formula has been prescribed. The second item requires assignment of points out of total 40 points. Assigning the points against this item consists three parts. The first part is of the marks/points required to be assigned on the basis of 'the legal formulations' of the candidates as reflected from the judgments (reported and un-reported) in which the candidates have appeared. The second part is of pro-bono work done by the advocates concerned and third part is of expertise of the applicants in various branches of law, such as Constitutional law, Inter-State Water Disputes, Criminal law, Arbitration law and others laws as set out in second item. The third item of clause-7 of paragraph-73 provides for assigning maximum 15 points for Publications by the applicants. It obviously contemplates publication of legal work such as books, articles, papers, thesis etc. The points are required to be assigned to second and third items on the basis of the material produced by the applicant/proposer along with the proposal and material produced by the Secretariat as per the directions of the Permanent Committee, if any. The fourth item is a test of

personality and suitability on the basis of interview/interaction, for which points out of total 25 points are required to be allotted.

56. The Apex Court has used both the words interview and interaction in the fourth item. To some extent, this assessment based on interaction/interview is always subjective. But obviously it cannot be equated with *vivo voce* which is conducted in a selection process. It is an interaction to assess the candidate with a view to make overall assessment of the personality and suitability of the candidate. However, normally, what is contemplated is individual interaction with each candidate. If more than one candidates are interviewed together, the interview/interaction may not be in terms of Paragraph 73.7. It may not be proper to assign points out of 25 points by holding joint interaction with candidates.

57. From the express language used in paragraph-73, it is very clear that very meticulous exercise like assessing a candidate in a competitive examination or in a selection process is not required to be made, inasmuch as, clause-7 of paragraph-73 of the guidelines issued by the Apex Court specifically provides that the Permanent Committee is expected to make its

overall assessment on the basis of a point based format indicated in first to fourth items in the table in clause-7 of paragraph-73. It is apparent from the word 'overall assessment' that the Permanent Committee is not supposed to conduct meticulous examination of the candidates. It supposed to make an overall assessment of the candidates. We must remember that four out of five members of the Permanent Committee are higher constitutional functionaries holding the constitutional posts. The Chief Justice of a High Court has a very long judicial and administrative experience. So is the case with the two senior most Judges of the High Court. The Advocate General also holds the constitutional office. He is the leader of the Bar. Even the fifth member of the Permanent Committee will be normally an eminent and senior member of the Bar. Therefore, the members of the Permanent Committee are not expected to conduct any examination. They always have an occasion to regularly observe performance of most of the applicants, as all candidates are in practice for minimum ten years. The requirement is that they must make an overall assessment of the applicants based on the materials/data collected, compiled and placed by the Permanent Secretariat and other factors as

specified in the table in paragraph 73.7 as well as personal interaction. The overall assessment is to be made on a points/marks based system. An Advocate who claims to be having standing minimum 10 years of practise at the Bar is not required to be subjected to some kind of an examination to test his basic legal knowledge, personality and standings. The principal object of setting up of Permanent Committee is to see that overall assessment made by the Committee is made available to the Full Court. The overall assessment made by the Permanent Committee enables the Full Court to make its own assessment. The exercise done by the Permanent Committee cannot be looked as an examination conducted by the Committee. It is an overall or broad assessment made by its members by using their vast experience. The mode of assessment is by the assignment of points or marks.

58. Now coming to the marks or points to be assigned to legal formulations of the Advocate in the course of the proceedings of the case, there may be instances where large number of judgments even more than fifty or one hundred are relied upon by some of the applicants-Advocates. The three out of five

members of the Permanent Committee, in their capacity of the sitting Judges, are used to go through large numbers of case files and the judgments of various Courts every day. Moreover, the Apex Court directions do not contemplate that the members of the Permanent Committee should make a thorough examination of all the judgments. The reason is they have to assign marks to legal formulations made by the applicant which are reflected from judgments. They are not concerned with the findings recorded in the Judgments. With their vast experience, the Judges, the Advocate General and the senior member of the Bar can quickly go through those part of the judgments which contain legal formulations which are normally reproduced in few paragraphs. Moreover, the Permanent Committee can always take help of the members of the Permanent Secretariat which normally consists of the Officers of the Registry who are senior and experienced District Judges and there is nothing wrong if the identification of paragraphs containing the legal formulations made by the applicants/Advocates is made by the members of Permanent Secretariat having judicial experience. Then the Permanent Committee members can go through only the relevant parts of the judgments containing legal formulations

made by the applicants. If we accept the argument advanced by some of the learned counsel for the petitioners that it was necessary for all the members of the Permanent Committee to read each and every judgment and make analysis thereof, if in a given case where there are fifty candidates and each of them submits more than fifty judgments, for meticulous reading of all the 2500 judgments, it will require days or even months. It will be very difficult for the three senior most Judges to read the judgments in its entirety, inasmuch as, the three senior most judges, apart from their judicial work, are burdened with lot of administrative work. Even the learned Advocate General has enormous work in his hands apart from appearing before the High Court as well as the Apex Court for representing the State. He is assigned with several duties including rendering legal opinions to the State Government on the matters relating to the complicated legal issues. If we accept the argument that all the members ought to have gone through all the judgments, that process will itself take few months and some times a year or more, as each member will have to go through the hundreds of judgments meticulously. For publication by the Advocates of papers, articles, thesis etc, maximum fifteen marks can be

assigned. While assessing personality and suitability, the members of the Committee can always use their accumulated experience of seeing the candidates in action before the Court. When four out of five members are high constitutional functionaries, it is not necessary that they will require a long time to test the personality and suitability of the candidates because most of them had an occasion to see the performance and ability of the applicants on day-to-day basis during Court proceedings. Normally, the 5th member who is the nominee of four members of the Permanent Committee is invariably a senior member of the Bar who also has an occasion to observe the performance of the candidates in the Court. Therefore, the Apex Court expects the Permanent Committee to make overall assessment and a very strict standards of subjecting the candidates to an examination and/or viva voce in a selection process cannot be applied.

59. One of the petitioners in person appearing in these matters has produced the affidavits of two Advocates who appeared for interview/interaction before the Permanent Committee and who have not been designated as Senior Advocates. But both of them have not chosen to challenge the decision of the Full Court. Those affidavits have been filed with a view to place on record

the nature of the questions asked to them during their interview/interaction. A hue and cry has been made about the question asked to one of them as to who was the best judge in the High Court according to the opinion of the candidate and who was the worst Judge. Even such questions would test the mettle of the Advocate-applicant, inasmuch as, from the answers given by him, his sense of proprietary can be judged apart from his personality. The argument that irrelevant questions are asked cannot be accepted as the assessment is subjective. There may be reasons for asking every question. But a writ Court cannot sit over in appeal to go into the issue of relevancy of the questions. Moreover, the fact that interaction lasted for few minutes is no ground to challenge the decision making process. The member in the Committee, with their experience, can judge a candidate by asking even very few questions.

60. As contemplated by sub-section (2) of Section 16 of the Advocates Act, one of the important criteria is the standing at the Bar. The act of putting on record of these petitioners, the questions asked by the members of the Permanent Committee, who are the Constitutional functionaries may have direct

correlation with the standing of the Advocates who have ventured to put the questions on record of these petitions. These are the matters where the members of the Bar were expected to show a restraint. Various questions have been raised by the petitioners as to how the five members could go through the large material placed before them in a short time, especially when there were large number of the judgments relied upon by the candidates. As already discussed earlier, all these flimsy arguments ignore the fact that four out of five members of the Permanent Committee are high constitutional functionaries having rich experience in the field of law.

61. Most of the arguments proceed on the footing that a very meticulous examination of the candidates by the Permanent Committee is contemplated and the Permanent Committee is expected to virtually conduct a meticulous examination of the candidates. This Court is of the considered view that to make overall assessment as per the guidelines/norms of the Apex Court, the Permanent Committee need not conduct a detailed interview or examination of the candidates. The Permanent Committee is not expected to ask the questions like what is

Article 21 of the Constitution of India or what is Article 368 of the Constitution of India or for that matter, what is the difference between culpable homicide not amounting to murder and murder to the Advocates who have put in 10, 20 or more years in legal profession. The members of the Committee, with the help of their rich experience, can always make general discussion with the candidates for example, asking the opinion of the candidate about the recent important judgments of the Apex Court to test his acumen. The argument of the petitioners in substance that the candidates will have to be subjected to a meticulous examination for designating them as Senior Advocate is against the object of the norms/guidelines set out by the Apex Court in the case of ***Indira Jaising*** *(supra)* and cannot be sustained.

62. Now coming to the guidelines in paragraph-73.8 and 73.9, there is some controversy raised as to whether only those names which are recommended by the Permanent Committee will be placed before the Full Court. As can be seen from the directions in paragraph 73.4 to 73.7, the function and duty assigned to the Permanent Committee is of making overall assessment of the applicants on the basis of a point based format as contained in

paragraph 73.7. The directions of the Apex Court do not contemplate that the Committee should make any recommendation that particular candidates deserve to be designated as Senior Advocates. The Apex Court has not conferred power on the Permanent Committee to make any recommendations of few candidates. The scheme of the directions issued by the Apex Court seems to be that the Permanent Committee's duty is to make overall assessment by assigning points out of 100 points as provided in the directions of the Apex Court. The overall assessment made by the Permanent Committee of all the applicants has to be placed before the Full Court along with necessary details such as points assigned by each member under the heads provided in paragraph 73.7. The Permanent Committee is not assigned with the duty of making any recommendation. But, it can be always said that overall assessment in the form of points assigned to all candidates is the recommendation of the Committee. The Full Court is not bound by the assessment made by the Permanent Committee of each and every candidate. As per normal practice followed, before holding a Full Court meeting, the overall assessment with details will be circulated to all the Judges before

the Full Court meeting and if any of the Judges have any doubt about the suitability of any candidate, he can always get the materials from the permanent Secretariat/Registry. Therefore, we have no manner of doubt that the case of each eligible candidate who has made a valid application must be placed before the Full Court along with the overall assessment of each candidate made by the Permanent Committee. The overall assessment is the basis on which the Full Court can commence discussion. It is quite natural that the members of the Full Court will always have in the back of their minds that the overall assessment is made by the Committee consisting of three senior most judges having a rich experience on the administrative and judicial side, a constitutional functionary like the learned Advocate General who is a senior member of the Bar and a distinguished Senior Advocate of the Bar. This is not to suggest that the Judges forming part of Full Court cannot discard the assessment made by the Permanent Committee of a particular candidate or for that matter all the candidates.

63. Now coming to clause 73.9 regarding secret ballot, the Apex Court's direction with emphasis is that voting by secret

ballot will not normally be resorted to by the Full Court except when it is unavoidable. Thus, the general rule is that voting by secret ballot will not be normally be resorted to by the Full Court. The exception is when secret ballot is un-avoidable. Thus, only in exceptional cases/situations, voting by secret ballot can be resorted to. Only because few members of the Full Court demand voting by a secret ballot, if voting secret ballot is resorted to, it will completely defeat the directions issued by the Apex Court that normally voting by secret ballot should not be resorted to. For an example, if the Full Court has the strength of fifty members, if only four or five members of the Full Court demand voting by secret ballot and if voting of secret ballot is resorted to, it cannot be said that secret ballot is unavoidable. Only when the situation is extraordinary or exceptional that secret ballot can be taken recourse to. For example, if the sizeable number of members, though less than the majority insist on voting by secret ballot.

64. Paragraph 73.10 deals with the cases which have not been favourably considered by the Full Court. These are the cases where the Full Court does not accede to the request for

grant of designation as Senior Advocate. Such cases cannot be reconsidered immediately and the same can be reviewed or reconsidered only after the expiry of period of two years. That also by considering the proposals as fresh proposals. Thus, if there are ten applications made to the Permanent Secretariat which are found to be valid and out of ten, only five are favourably considered by the Full Court and if the remaining five are not granted designation after considering their cases, the applications of the said remaining five cannot be considered for a period of two years.

65. Paragraph 73.11 is of great deal of importance. It operates after a designation is granted to an Advocate. Going back to sub-section (2) of Section 16 of the Advocates Act, it must be remembered that apart from the ability or special knowledge or experience in law, what is important is the standing at the Bar. An advocate can be designated as a Senior Advocate only when the High Court is of the view that considering his standing at the Bar and his ability, knowledge or experience in law he deserves such designation. The standing at the Bar has a direct correlation with conduct of the Advocate inside and outside the Court. Take a hypothetical case where a

body competent to decide whether a particular Advocate has committed misconduct or misbehaviour holds that a designated Senior Advocate is guilty of professional misconduct and if the said finding of fact attains finality, it cannot be said that such an Advocate continues to possess the standing at the Bar which is a condition precedent for designation as Senior Advocate. There may some cases where though the Advocate has the ability, experience and sound knowledge of various laws, but after his designation as Senior Advocate, he conducts before the Court in such a manner that his conduct is not consistent with the decorum of the Court or the dignity of the profession. For example, in a given case, if the designated Senior Advocate makes scandalous allegations or unsubstantiated allegations of serious nature against his opponent or any member of the Bar before the Court. There are several instances of such misbehaviour. In such cases, paragraph 73.11 may be attracted and the Full Court may exercise the power to review its decision by recalling the designation conferred on the Advocate. No hard and fast rule can be lay down to decide in which cases review should be made, but in a given case, when Full Court finds that the conduct of a Senior Advocate, after his designation is

unbecoming of that status, it can always exercise the power to review.

66. Paragraph 74 will have to be read in its entirety. The first part of paragraph 74 records that the directions contained in paragraph 73 to 73.11 are not exhaustive. It does not mean that High Court can frame guidelines which are inconsistent with directions. The guidelines/rules of a High Court may contain certain additional guidelines which are not part of the directions in paragraphs 73 to 73.11 of the Apex Court decision. But the same cannot be contrary to or inconsistent with the directions of the Apex Court. Explanation to Sub-Rule (1) of Rule 3 of Senior Advocates Rules can be illustration of such addition which is not inconsistent with the directions of the Apex Court. The subsequent part will clearly show that the directions can be re-considered only by the Apex Court. No other Court can tinker with the directions. Considering the fact that as indicated by paragraph-73, the guidelines issued by the Apex Court are in exercise of the power under Article-142 of the Constitution of India, so long as the same are not amended or modified by the Apex Court, the High Courts cannot overlook and act contrary to or inconsistent with any of the guidelines laid down by the Apex

Court by relying upon the observations in the first part of paragraph 74 that the same are not exhaustive. All the High Courts are bound by the guidelines till the same are modified by the Apex Court.

Senior Advocates Rules:

67. Now we come to the Senior Advocates Rules. The same must be consistent with the directions issued by the Apex Court in the case of ***Indira Jaising*** *(supra)*. If any of Rules are inconsistent with the directions of the Apex Court, the same will have to be ignored and the directions of the Apex Court will have to be strictly followed. Rule 3 which we have already quoted has nothing to do with the directions contained in the decision of the Apex Court. Sub-Rule (1) of Rule-3 virtually reproduces sub-section (2) of Section-16 of the Advocates Act. The explanation therein seeks to incorporate the meaning of the term "standing at the Bar". There is nothing wrong with such explanation, as it is obvious that an Advocate is said to have standing at the Bar, if he is maintaining highest ethical standards. When the explanation refers to the word 'ethics' it refers not only to the rules of ethics in popular sense, but also to the rules ethics formulated by the Bar Council of the State or the Bar Council of

India. There is nothing wrong with sub-rule (2) of Rule-3, as the norm of 10 years of practice is upheld in paragraph 72 of the guidelines of the Apex Court. Rule-4 provides who can make a motion or a proposal for designation. Rule 4 cannot be said to be inconsistent with the guidelines of the Apex Court.

68. Sub-Rule (1) of Rule-5 provides that all matters relating to designation of Senior Advocates in the High Court shall be dealt with by a Permanent Committee. This does not mean that the decision of the Permanent Committee is final. We have already explained this sub-rule in paragraph 52 above while dealing with paragraph 73.1 of the Apex Court decision. As held by us, the directions issued in the case of ***Indira Jaising*** *(supra)* make it abundantly clear that the function of the Permanent Committee is to make overall assessment of all the candidates by assigning points and such overall assessment does not necessarily bind the Full Court. To that extent, the first part of Sub-Rule (1) of Rule-5 will have to be read down.

69. Sub-Rule (2) to (4) of Rule-6 which we have quoted earlier are reproduced for the sake of convenience which read thus:

> (2) *On receipt of the application or proposal for designation of an Advocate as a Senior Advocate, the Secretariat shall compile the relevant data and information with regard to the reputation, conduct, and integrity of the Advocate including his participation in pro-bono work and reported cases or cases involving questions of law in which he had appeared and actually argued during the last five years.*
>
> (3) *The Secretariat will publish the application/proposal received for designation of an Advocate as a Senior Advocate in the official website of the High Court of Karnataka inviting suggestions/views of other stakeholders to the proposed designation within such time as may be directed by the Committee.*
>
> **(4)** *The Secretariat will place the suggestions/views of other stakeholders to the proposed designation before the Committee for taking further instructions. The Committee may, if considered fit and necessary, seek the response from the Advocate on the suggestions/views received in relation to his proposed designation, within such time as may be directed.*

70. Sub-rule (2) lays down the functions of the Secretariat of compilation of the data mentioned therein. In fact, the direction of the Apex Court in paragraph 73.4 is in the same terms. Some arguments are made based on sub-rule (3) of Rule-6 to the effect that not only the applications or proposals or names of the applicants should be published on the website but also the data

collected by the Permanent Secretariat should placed/published on the website. We have already dealt with this aspect in paragraph 54 above. However, the data so compiled by the Permanent Secretariat is not a part of the application/proposal. Even paragraph 73.5 of the directions of the Apex Court does not provide that the data compiled by the petitioner should be published on the website. It provides only for the publication of the proposals received. The object of the direction contained in paragraph 73.5 is that the stakeholders such as the members of the Bar, the Bar Association, the Bar Council and litigants who are conversant with the performances of the applicants can always make their suggestions/views on the proposals. The suggestions/views can be expressed on a particular applicant only by those stakeholders who know the applicant. Therefore, as held earlier, even if the names of the applicants are published on the official website of the High Court, as there will be a substantial compliance of the guidelines in paragraph 73.5. The object of direction issued in paragraph 73.5 is not allow the stakeholders to make a fishing enquiry about the applicants and raise frivolous objections. The stakeholders are supposed to submit their views/suggestions on the candidates known to them.

In case of Bar Councils, once the names are published, they can ascertain whether disciplinary proceedings are pending against the Advocate, and submit its suggestion pointing out the pendency of the case. Paragraph 73.5 does not use the word ‘objections’.

71. Sub-Rule (2) of Rule-6 refers to collection of information and data by the Secretariat. Paragraph 73.6 of the decision of the Apex Court rendered in ***Indira Jaising*** confers power on the Permanent Committee to direct the Secretariat to collect certain information about the candidates and the information so collected is basically for making overall assessment by the Permanent Committee. There will be inherent limitations on the Permanent Secretariat on collecting the information regarding the efficiency, conduct and integrity of the Advocates on its own. Column-8 of both Form No.1 and 2 of the proposals require inclusion of other information, such as legal aid work, publication/participation in seminars/association with faculty of law and other information. If any doubt is created about the information given in the proposals regarding pro-bono work done by the applicant, it can be verified by the Permanent Committee

through the Secretariat. Merely because the Permanent Secretariat has not collected the information regarding conduct and integrity of the candidates, the process will not be vitiated. The stakeholders like the Bar Associations, State Bar Council and Advocates can always supply the said information while submitting their suggestions and views. Sub-Rule (7) of Rule-6 again is consistent with the directions of the Apex Court which provides for overall assessment of all the Advocates has to be made by the Permanent Committee and the same is required to be submitted to the Full Court along with the assessment reports.

72. Rule-7 provides that an Advocate being designated as Senior Advocate shall subject to such restrictions as the High Court of Karnataka or the Bar Council of India may prescribe. Sub-Section (3) of Section-16 of the Advocates Act confers a power only on the Bar Council of India to subject the Senior Advocates to restrictions in the matter of their practice in the interest of legal profession. But, Section-16 does not confer such power on the High Court. However, the High Court may exercise such power by framing rules as contemplated under Sub-Section (1) of Section-34 of the Advocates Act which

confers rule making power on the High Court to lay down the conditions subject to which an Advocate may be permitted to practice in the High Court, the trial and District Court. By exercising the power conferred under Rule-7 of the Senior Advocates Rules, the restrictions cannot be imposed by the High Court.

73. Rule-8 provides that canvassing in any manner by a nominee/applicant shall attract disqualification. Though the directions of the Apex Court are silent on this aspect, we do not think that the said rule is any way inconsistent with the directions, inasmuch as, it is obvious that if any nominee/applicant indulges in canvassing, it cannot be said that he has such a standing at the Bar which deserves him the designation. Any act of canvassing will show that the Advocate does not possess the requisite standing at the Bar.

74. Rule-9 empowers the High Court to review or recall the decision of conferring designation. Here again, the same is worded on the basis of the guidelines contained in paragraph 73.11 of the Apex Court decision. It only adds a provision for issue of notice to the concerned Senior Advocate with a view to

afford him an opportunity of being heard in accordance with principles of natural justice and therefore, no fault can be found with Rule-9.

75. Rule-11 provides that all questions relating to interpretation of the Rules shall be referred to the Chief Justice whose decision thereon shall be final. The Senior Advocates Rules have been framed for giving effect to the directions contained in paragraphs 73 to 73.11 of the decision of the Apex Court rendered in the case of ***Indira Jaising.*** The object of issuing the directions was to bring about uniformity in the approach of all the High Courts in the matter of grant of designation. The Apex Court directed that all the High Courts should modify their existing guidelines/rules, so as to make it strictly in conformity with the directions of the Apex Court and therefore, what was expected from the High Courts was incorporation of the directions issued by the Apex Court under Article-142 of the Constitution of India in the guidelines/Rules. The said decision holds that Section 16 can be saved from fragility provided all the High Courts follow uniform guidelines for designation. The directions of the Apex Court do not leave the

issue of interpretation of the Rules or guidelines to the Chief Justice of respective High Courts. Therefore, Rule-11 is completely inconsistent with the directions of the Apex Court and it cannot be implemented. The power to confer designation on any of the applicants is of the Full Court. Therefore, giving such a power to the Chief Justice may amount to interfering with the power of the Full Court which is impermissible.

76. The Rules framed by the High Court of Karnataka will have to be strictly consistent with the directions of the Apex Court issued under Article 142 of the Constitution of India. If some of the Rules cannot be reconciled or read down to make it consistent with the directions of the Apex Court issued under Article-142 of the Constitution of India, the same will have to be ignored by not implementing them.

VIII. CONSIDERATION OF SPECIFIC SUBMISSIONS:

77. We have already interpreted the directions of the Apex Court in the case of ***Indira Jaising*** and the Senior Advocates Rules framed by the High Court of Karnataka. Now we turn to specific submissions made on various points.

The issue of transfer order of Hon'ble Shri Justice Raghvendra S. Chauhan:

78. The petitioner appearing in person in W.P.No.6380 of 2019 and the learned Senior Counsel appearing for the petitioner in W.P.No.35595 of 2019 have laid much stress on the fact that one of the three Hon'ble Judges forming a part of the Permanent Committee viz., Hon'ble Shri. Justice Raghvendra S. Chauhan had received his transfer order on 8th November 2018 issued by the Hon'ble President of India transferring him as a Judge of the High Court of Judicature at Hyderabad for the States of Telengana and Andhra Pradesh and he was directed to assume charge of the office of a Judge of the High Court of Judicature at Hyderabad on or before 22nd November 2018. The first argument is that after the notification was issued by the Government of India on 8th November 2018, transferring Hon'ble Shri. Justice Raghvendra S. Chauhan to another High Court, he could not have exercised his power as a Judge of High Court of Karnataka. The argument is that Hon'ble Shri. Justice Raghvendra S. Chauhan ceased to be the Judge of the High Court of Karnataka with effect from 8th November 2018 and therefore, he could not have continued as a member of the

Permanent Committee and could not have participated in the meetings of the Permanent Committee held on 11th and 12th November, 2018 and in the meeting of Full Court held on 15th November, 2018. Reliance was placed by the petitioner appearing in person in W.P.No. 6380 of 2019 on a decision of the Apex Court in the case of ***S.P. Gupta –vs- Union of India and another*** (supra) and what is held in paragraph 900 of AIR report. He submitted that the learned Judge had demitted the office of Judge of the High Court of Karnataka on 8th November, 2018 on the issue of the transfer notification. Reliance was also placed on the constitutional provisions. Our attention was also invited by the respondents to the decision of the Apex Court in the case of ***Union of India –vs- Sankalchand Himatlal Sheth and another*** (supra). The submission of the petitioner is that the decision of the larger Bench in the case of ***S.P. Gupta*** (supra) will prevail.

79. Before we deal with the decisions relied upon by the parties, we must refer to the Constitutional provisions. Article 217 and in particular clause (1) thereof is relevant which reads thus:

> ***"217. Appointment and conditions of the office of a Judge of a High Court. -*** *(1) Every Judge of a High Court shall be appointed by the President by warrant under his hand and seal [on the recommendation of the National Judicial Appointments Commission referred to in article 124A], and [shall hold office, in the case of an additional or acting Judge, as provided in article 224, and in any other case, until he attains the age of sixty two years. Provided that-*
>
> *(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 by the President in the manner provided in clause (4) of article 124 for the removal of a Judge of the Supreme Court;*
>
> *(c) the office of a Judge shall be vacated by his being appointed by the President to be a Judge of the Supreme Court or by his being transferred by the President to any other High Court within the territory of India."*

(Underlines supplied)

80. When a person is appointed as a Judge of a High Court, except in the case of an additional or acting Judge, he is entitled to hold the office till he attains the age of sixty two years. There are three exceptions to the said general Rule, as specified in clauses (a) to (c) of the proviso to clause (1) of Article 217. Reliance was placed on clause (c) of proviso to clause (1) of Article 217 by contending that if a Judge of the High Court is

transferred to any other High Court by the Hon'ble President, the office of the said Judge in the original High Court shall stand vacated. At this stage, it is necessary t*o* refer to Article-222 of the Constitution of India which empowers the Hon'ble President of India to transfer a Judge from one High Court to another High Court. To decide the legal issue raised by the petitioner, it is also necessary to refer to Article-219 of the Constitution of India which reads thus:

> ***"219. Oath or affirmation by Judges of High Courts. –*** *Every person appointed to be a Judge of a High Court shall, before he enters upon his office, make and subscribe before the Governor of the State, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule."*
>
> *(Underline supplied)*

Article 222 reads thus:

> **"Transfer of a Judge from one High court to another.-** *(1) The President may, (on the recommendation of the National Judicial Appointments Commission referred to in article 124A), transfer a Judge from one High Court to any other High Court.*
>
> *(2) When a Judge has been or is so transferred, he shall, during the period he serves, after the commencement of the Constitution (Fifteenth Amendment) Act, 1963, as a Judge of the other High Court, be entitled to receive in addition to his*

> *salary such compensatory allowance as may be determined by Parliament by law and, until so determined, such compensatory allowance as the President may by order fix."*

81. When a sitting Judge of a High Court is transferred to any other High Court, before he enters upon his office as a Judge of the High Court to which he is transferred, he has to make and subscribe oath or affirmation according to the form set out for the purpose in the third schedule of the Constitution. When a person is appointed as a Judge of the High Court by virtue of warrant of appointment issued under clause (1) of Article-217, he does not actually become a judge of that Court unless he makes and subscribes oath or affirmation in the form as set out in the third Schedule. The same procedure applies to a Judge who has been transferred from one High Court to another High Court. On a conjoint reading of clause (1) of Article-217 with Articles 219 and 222, it is crystal clear that a Judge who is transferred to another High Court can be said to have become the judge of the transferee High Court only after he makes and subscribes before the Governor of the State or his nominee an oath or affirmation, as stated earlier. Therefore, it follows that so long as the time granted to the Judge to take/assume charge of the office of a

judge of transferee Court does not expire and so long as he does not make and subscribe oath of the office as a Judge of transferee Court, he continues to hold the office of the Judge of the original High Court to which he was earlier appointed. In the present case, Hon'ble Shri. Justice Raghvendra S. Chauhan was granted time till 22nd November, 2018 to assume charge of his office in the High Court of Judicature at Hyderabad. If the argument of the petitioner that with effect from 8th November, 2018 which is the date on which the transfer order was issued Hon'ble Shri Justice Raghvendra S. Chauhan ceased to be the judge of the High Court of Karnataka is accepted, it will lead to an absurdity, inasmuch as, from 8th November, 2018 till the date on which he assumed charge of post as a Judge of High Court at Hyderabad, he will not be a Judge of any High Court and he will not entitled to draw salary and other perquisites for the said period. There will be a break in his service. An interpretation which leads to such an absurdity cannot be accepted. Even before we look into the case law, on plain reading of the above provisions of the Constitution, the argument of the petitioners that Hon'ble Shri. Justice Raghvendra S. Chauhan ceased to be a Judge of the High Court of Karnataka as on 8th November,

2018 on the Hon'ble President of India issuing order of his transfer appears to be untenable and cannot be accepted. We must note here that we are not dealing with an issue whether by reason of propriety, the Hon'ble Judge could have informed the Hon'ble Chief Justice not to hold the meetings of the Permanent Committee, in view of orders of his transfer. There was no illegality associated with Hon'ble Shri. Justice Raghvendra S. Chauhan participating in the meetings of the Permanent Committee held on 11th and 12th November, 2018 and the meeting of the Full Court on 15th November, 2018, as he had not subscribed oath or affirmation as a judge of the transferee High Court till 15th November 2018. Assuming that there was any impropriety, that will not attract illegality.

82. There is one more aspect which needs to be noted. Hon'ble Shri. Justice Raghvendra S. Chauhan, being the second senior most Judge of this Court, was an *ex-officio* member of the Permanent Committee. So long as he was the second senior most Judge of the High Court of Karnataka, his place in the Permanent Committee could not have been taken by any other Judge inasmuch as the directions issued by the Apex Court in

Indira Jaising under Article 142 of the Constitution of India specifically lay down that the Permanent Committee will be headed by the Chief Justice of High Court which will consist of two senior most Judges of the High Court. Apart from this, the process of interaction with the candidates was completed by the Permanent Committee till 31st October 2018 by spending 9 or 10 days. The minutes of meeting dated 11th November 2018 of the Permanent Committee clearly record that exercise of assigning points based marks to the candidates was completed by that time. In fact, as the Chief Justice had convened the meeting of the Permanent Committee, Hon'ble Shri. Justice Raghvendra S. Chauhan had no other choice but to attend and participate in the said meeting, as no one could have replaced him at that juncture. If he had refused to attend the meetings, the entire exercise done for 9 to 10 days of interacting with the applicant – advocates would have gone waste and after his assuming charge of the post of a Judge of High Court of Hyderabad, the new Permanent Committee would have been forced to do the exercise all over again. We cannot ignore that the exercise of interview/interaction was done for 9 to 10 days by spending considerable time after Court working hours. It is really

unfortunate that such submissions are made by going to the extent that Hon'ble Shri Justice Raghvendra S. Chauhan had ceased to be a judge of this Court as on 8th November, 2018.

83. Now we refer to the decisions of the Apex Court on this issue. The first decision which was relied upon by the learned counsel for the 12th respondent, is in the case of ***Sankalchand Sheth*** (supra). This was a case where a Judge of the High Court of Gujarat was transferred to the High Court of Andhra Pradesh by the President of India, in exercise of the power under clause (1) of Article 222 of the Constitution of India. After assuming the charge of post of Judge of Andhra Pradesh High Court, the concerned Judge filed a writ petition in the Gujarat High Court for challenging his order of transfer. It was heard by a special Bench consisting of three Hon'ble Judges. The majority view was that consent of a Judge of High Court for his transfer is not required. One of the Hon'ble Judge had dissented with the said view. It was held that effective consultation with the Chief Justice of India before passing an order of transfer was mandatory and in the facts of the case, there was no effective consultation with the Chief Justice of India

and therefore, the Gujarat High Court proceeded to set aside the transfer order. Being aggrieved, the Union of India filed a Civil Appeal before the Apex Court, as a certificate under Article 132 and 133 (1) of the Constitution of India was granted by the Gujarat High Court. After the arguments were fully heard and at the time when the case was closed for judgment, a statement was made by the learned Attorney General before the Apex Court that the Government of India accepted that there was no justification for transferring the learned Judge and made a statement that it is proposed to re-transfer the concerned Judge back to the original High Court. In view of the said statement, the original writ petition was withdrawn by the learned Judge. However, the Judgement was delivered by the Apex Court on merits, as there were already deliberations amongst the Hon'ble Judges. There were separate Judgments delivered by Y.V. Chandrachud, J, P.N. Bhagwati, J, V.R. Krishna Iyer, J and for himself and S. Murtaza Fazal Ali, J and N.L. Untwalia, J. The view expressed by Chandrachud, J was that consent of the Judge is not necessary for effecting transfer under clause (1) of Article-222. However, he held that there must be an effective consultation by the Hon'ble President of India with the Hon'ble

Chief Justice of India before passing an order of transfer and that the power of transfer can be exercised only in public interest. Bhagwati, J held that consent of the judge for his transfer is necessary. Krishna Iyer, J speaking himself and for Fazal Ali, J., held that the consent is not contemplated by clause (1) of Article 222. Krishna Iyer, J also expressed his view that power under Article 222 must be exercised in exceptional circumstances and in public interest and only when it becomes expedient and necessary in the public interest and that also after effective consultation with the Chief Justice of India. Untwalia, J in his opinion concurred with the said view that consent of the Judge was not warranted. He concluded that no order of transfer can be made without effective consultation with the Hon'ble Chief Justice of India and normally, the opinion of the Chief Justice of India will prevail. Though the issue relating to the order of transfer of a Judge under clause (1) of Article 222 of the Constitution of India was involved, the issue as to when the order of transfer takes effect did not specifically arise for consideration before the Apex Court. However, the said issue is considered by Bhagwati, J in his erudite opinion in paragraph-59 which reads thus:

*"**59.** This view, which I am taking, is also supported by the scheme and language of the relevant constitutional provisions. It may be noticed that the basic postulate underlying these constitutional provisions is that a person is appointed as a Judge of a particular High Court and not a High Court Judge simpliciter. There is no All-India cadre of High Court Judges. When a person is appointed a Judge of a particular High Court, he has to make or subscribe an oath or affirmation before the Governor of the State and then only he assumes charge of his office and becomes a Judge of that High Court. He is then entitled to continue to occupy the office of Judge of that High Court until he attains the age of 62 years, subject to three provisos, of which the first two, which provide for resignation and removal, are immaterial and the third is that his office shall be vacated by his "being appointed by the President to be a Judge of the Supreme Court or his being transferred by the President to any other High Court within the territory of India". Now, under the Government of India Act, 1935 also there was a similar provision in proviso (c) to sub-section (2) of Section 200, but this provision employed a slightly different phraseology and provided that the office of a High Court Judge shall be vacated "by his being appointed to be a Judge of the Federal Court or of another High Court". Neither in proviso (c) nor in any other provision of the Government of India Act, 1935 was the word "transfer" used and there was also no specific provision in that Act conferring power to transfer a High Court Judge. The power to transfer a High Court Judge was expressly conferred for the first time under the Constitution and it was provided that the office of a High Court Judge shall be vacated by his being transferred to another High Court. The question is whether the use of the word "transfer" in the Constitution makes any difference to the position which obtained under the Government of India Act, 1935. There is one difference which is obvious and it is that, whereas under the Government of India Act,*

1935, it was only when appointment to another High Court was made by the Governor-General by following the procedure prescribed for making such appointment, that the Judge vacated his office as Judge of the original High Court, the. position under the Constitution is that appointment of a Judge to another High Court can be made by transfer and such appointment would not have to go through the procedure prescribed for a new appointment. Transfer of a Judge under the Constitution is a mode of appointment to the High Court to which the Judge is transferred. This becomes patently clear if it is borne in mind that when a Judge is transferred to another High Court, he has to make and subscribe a fresh oath or affirmation before the Governor of the State to which he is transferred, before, he can enter upon the office of Judge of that High Court and that oath or affirmation has to be in Form VIII in the Third Schedule. The Judge who is transferred is, therefore, by the modality of transfer, appointed as a Judge of the High Court to which he is transferred and he becomes a Judge of that High Court only when he makes or subscribes an oath or affirmation before the Governor of that State. It is only then that the transfer of the Judge from one High Court to another is complete and he ceases to be a Judge of the High Court from where he is transferred. It could not have been intended by the Constitution-makers that a Judge of a High Court should vacate his office and cease to be a Judge of that High Court as soon as an order of transfer is made and before he makes or subscribes an oath or affirmation before the Governor of the State and assumes charge of his office as Judge of the High Court to which he is transferred. That would bring about a hiatus in service which could never have been contemplated by the Constitution-makers. The act of assumption of office of Judge of the High Court to which the transfer is made must necessarily be simultaneous in point of time with the act of vacating the office of Judge of the High Court from where the transfer is made. In fact,

the latter event completes the process of transfer and produces the former consequence. It may also be noted that though proviso (c) to clause (1) of Article 217 speaks of the office of Judge of a High Court being vacated by his being appointed to be a Judge of the Supreme Court, clause (11)(b) of the Second Schedule refers to such appointment as "transfer from a High Court to the Supreme Court". This clearly shows that the word 'transfer' is used by the Constitution-makers in the mechanical sense of going from one post to another and not in the sense in which it is ordinarily used where there is transfer from one station to another within the same cadre. Even appointment of a High Court Judge to the Supreme Court is regarded as transfer to the Supreme Court. I have, therefore, no doubt that when a Judge is transferred from one High Court to another, he is appointed to the High Court to which he is transferred and it is only when he assumes charge of the office of Judge of that High Court by making and subscribing an oath or affirmation before the Governor of the State, that he ceases to be a Judge of the High Court from where he is transferred. Now, it is difficult to believe that the Constitution-makers could have ever intended that appointment of a Judge to a High Court or to the Supreme Court could be made without his consent. How would such appointment become effective unless the Judge who is appointed makes and subscribes an oath or affirmation before the Governor, in case of appointment to the High Court and before the President, in case of appointment to the Supreme Court. And that would plainly be a matter within the volition to the Judge. It is, therefore, obvious that the volition of the Judge who is transferred is essential for making the transfer effective and there can be no transfer of a Judge of a High Court without his consent. This is the position which emerges clearly from a consideration of the conspectus of the relevant constitutional provisions."

(Underlines supplied)

84. Even V.R. Krishna Iyer, J in his erudite exposition has made a reference to this controversy in paragraph-134 which reads thus:

> *"**134.** As I have said above, there is no All-India cadre of High Court Judges. Article 214 says "there shall be a High Court for each State". According to Article 216 "Every High Court shall consist of a Chief Justice and such other Judges as the President may from time to time deem it necessary to appoint". Appointment and conditions of the office of a Judge of a High Court are provided for in Article 217 which clearly indicates that a qualified person is appointed as a Judge of a particular High Court in a particular State at the threshold. He is entitled to hold office as a Judge of that High Court until he attains the age of 62 years. But this is subject to three exceptions mentioned in the proviso appended to clause (1) of Article 217. Provisos (a) and (b) respectively deal with the resignation from the office of a Judge by his voluntary action and his removal from office in the manner provided in clause (4) of Article 124 as in the case of the removal of a Judge of the Supreme Court. Proviso (c) is important and is as follows:*
>
> > *"the office of a Judge shall be vacated by his being appointed by the President to be a Judge of the Supreme Court or by his being transferred by the President to any other High Court within the territory of India."*
>
> *Article 222(1) confers power on the President to transfer. Before I make my comments it is necessary to read Article 219 which says:*

> *"Every person appointed to be a Judge of a High Court shall, before he enters upon his office, make and subscribe before the Governor of the State, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule."*

Similarly, in the case of a Supreme Court Judge it has been provided in clause (6) of Article 124:

> *"Every person appointed to be a Judge of the Supreme Court shall, before he enters upon his office, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule."*

The important thing to notice is that if the office of a Judge is vacated by his resignation or removal, there is no question of his re-entering the office of a Judge either of the Supreme Court or the High Court; but if the office is vacated under proviso (c) of Article 217 then on appointment as a Judge of the Supreme Court he has to re-enter and occupy that office in accordance with Article 124(6). What is the effect of the office of a Judge being vacated by his transfer to any other High Court? Does it stand vacated as soon as the order of transfer is made? Or, is it vacated when he assumes office as a Judge of the High Court to which he is transferred? Proviso (c) provides for the vacation of the office of a Judge of the High Court from which he is transferred but Article 222 does not make any provision for re-entering the office or occupying it as a Judge of the different High Court to which he is transferred. The only mode and the procedure left for that purpose is to be found in Article 219 and

> *nowhere else. The mere order of transfer does not make him a Judge and a member of the High Court to which he is transferred. There is no such condition of service or office of a Judge provided for in the Constitution or in any other law. Appointment as a Judge to the Supreme Court and transfer to another High Court within the meaning of proviso (c), in my opinion, are in substance on the same footing. Appointment of a High Court Judge to be a Judge of the Supreme Court is not a mere act of transfer as it is an appointment to a higher Court. Yet for the continuity of the service, pension, travelling allowance, etc. it has been treated as a transfer of the Judge from the High Court to the Supreme Court for being appointed to the latter Court. The word "transfer" has been used in proviso (c) of Article 217(1) and Article 222(1) because the transfer is from one High Court to another as a High Court Judge and not to any superior Court. But yet the effect of the transfer is to make the Judge transferred to vacate his office of a Judge of the High Court from which he is transferred and to appoint him as a Judge of the High Court of another State. For the purpose of continuity of service, pension, travelling allowance, etc., there is hardly any difference between the case of appointment of a High Court Judge to the Supreme Court, and transfer to another High Court."*

(Underlines supplied)

85. In paragraph-134, Krishna Iyer, J observed that mere order of transfer does not make him a Judge and a member of the High Court to which he is transferred. In paragraph-135, V.R. Krishna Iyer, J recorded specific finding which reads thus:

> ***"135.*** *I may lend further support to the view expressed above, as rightly pointed out by Mr*

Seervai, from the two matters in the Schedules to the Constitution. Clause 11(b) of Part D of the Second Schedule says:

> *"Actual service" includes—*
>
> ** * **
>
> *(iii) Joining time on transfer from a High Court to the Supreme Court or from one High Court to another."*

It is plain that the joining time on transfer in both the cases will keep the Judge transferred either to the Supreme Court or to the High Court, a Judge of the High Court from which he is transferred until he assumes charge of his office on appointment as a Judge of the Supreme Court or of another High Court. The form of oath or affirmation to be made by the Judges of High Courts as prescribed in the Third Schedule clearly indicates that under Article 219 the Judge takes the oath on his being appointed to be a Judge of a particular High Court and not of any High Court in India. To me it appears, and I say at the cost of repetition, that a transferred Judge cannot become a Judge of the High Court to which he is transferred without taking his fresh oath in accordance with Article 219 and in the form prescribed in the Third Schedule. It was pointed out by the Attorney-General that if it was so then the requirement of consultation with the Governor of a State and the Chief Justice of the High Court to which a Judge is transferred in accordance with clause (1) of Article 217 was also necessary but there is no such provision in Article 222. To me it appears that it may be a lacuna or this may not have been thought quite necessary. But that does not take away the effect of Article 219."

(Underlines supplied)

86. The decision in the case of ***Sankalchand Sheth*** (supra) was delivered by a Constitutional Bench of five Hon'ble Judges of

the Apex Court. The petitioner appearing in person in W.P.No. 6380/2019 relied upon a decision of Bench of seven Hon'ble Judges of the Apex Court in the case of (***S.P. Gupta –vs- Union of India and another*** (supra)***.*** He relied upon the observations made in paragraph 900 of AIR report which are paragraphs 909 to 911 of SCC report. It read thus:

> *"**909.** The present Article 222 reads :*
>
> > *"222. (1) The President may, after consultation with the Chief Justice of India, transfer a Judge from one High Court to any other High Court.*
> >
> > *(2) When a Judge has been or is so transferred, he shall, during the period he serves, after the commencement of the Constitution (Fifteenth Amendment) Act, 1963, as a Judge of the other High Court, be entitled to receive in addition to his salary such compensatory allowance as may be determined by Parliament by law and, until so determined, such compensatory allowance as the President may by order fix."*
>
> *I think it is necessary to remove the impression that the Judges of the High Courts constitute a single All-India cadre. The constitutional scheme embodied in Chapter V. envisages each High Court as a distinct entity from every other High Court. It is a complete, self-contained and self-sufficient institution, independent of the others and not related to them in any manner. Every High Court draws its own powers and jurisdiction from the provisions of the Constitution, and in no way does it share them with*

the other High Courts. When a Judge is appointed to a High Court, he is appointed to that High Court only. It is for that reason clause (c) of the proviso to clause (1) of Article 217 enacts that the office of a Judge shall be vacated by his being transferred to any other High Court. He is the holder of a distinct office, that of a Judge of the High Court to which he is appointed. It will be noticed that the consultative process envisaged in clause (1) of Article 217 involved in his appointment requires the President to consult the Chief Justice of the High Court to which his appointment is proposed and the Governor of the State concerned, besides the Chief Justice of India. The Chief Justice of the High Court is consulted because, as has been observed earlier, he is intimately concerned with the appointment of a competent Judge to meet the particular requirements of his Court. The Governor of the State likewise is consulted because he is concerned about the quality of the administration of justice at its highest level in the State. In the case of both functionaries, they are involved with the appointment in order to ensure that the Judge appointed is most suitable in relation to that High Court. The interests and needs of that High Court alone occupy the mind of these two functionaries. A person may be found unsuitable, by reason of association or other links, for being a Judge of the particular High Court, while he may be free from that embarrassment in respect of the other High Courts. It may be observed that the Presidential warrant appointing the Judge specifically mentions that the appointment is as a Judge of the High Court named therein. Moreover, the prescribed Form itself of the oath, which the Judge must make and subscribe before entering upon his office shows clearly that the appointment is confined to that High Court. We have been referred to Hira Singh v. Jai Singh [AIR 1937 All 588 : ILR 1937 All 880 : 1937 All LJ 659, 840 : 171 IC 153] where a full Bench of the Allahabad High Court held that an Additional Judge of that court who had already taken oath on such

appointment was not obliged to take oath again on his appointment as a permanent Judge. The case is clearly distinguishable, for it was one where the Judge continued to be a Judge of that court. He had not been transferred to another High Court. Under our Constitution, the Form reads:

> *I, A.B., having been appointed Chief Justice (or a Judge) of the High Court at (or of)..................……………….. do swear in the name of God solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India, that I will duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office without fear or favour, affection or ill will and that I will uphold the Constitution and the laws. [Form No. VIII in the Third Schedule to the Constitution]*

There is no All-India Service of High Court Judges. Article 214 speaks of a High Court for each State, and Article 216 plainly declares that the High Court shall consist of a Chief Justice and other Judges. The Chief Justice is a Chief Justice of that High Court only and so are the other Judges. The Judges of a High Court owe their responsibilities and discharge their functions in relation to, that High Court only. They have no constitutional connection and no legal relationship with the body of Judges of any other High Court. This position, in my view, cannot admit of any doubt.

***910.** That being the position how then can the transfer of a Judge from one High Court to another High Court be viewed in law? A Judge appointed to a High Court is entitled to continue as a Judge of that High Court until he attains the age of 62 years,*

unless of course he resigns his office or is removed from it. His transfer to another High Court involves the vacation of his office in that High Court, that is to say, his appointment as a Judge of that High Court stands terminated. This is confirmed by clause (c) of the proviso to clause (1) of Article 217. Simultaneously, without anything more the transfer affects his appointment to the other High Court to which he is being sent. An order of transfer under clause (1) of Article 222 therefore, is a transaction in two parts, the termination of the appointment as a Judge of the original High Court and the simultaneous appointment as a Judge of the other High Court. That view is supported by the circumstance that the power of transfer is vested in the President. It is significant in this connection that the President is also the appointing authority in the case of appointments made under clause (1) of Article 217 and is also vested with the power of removal in cases falling under Article 218 read with clause (4) of Article 124. Therefore it was necessary that the authority who has been otherwise vested with the power to appoint a Judge and to terminate his appointment should also be the authority to transfer him. It may be added that inasmuch as the transfer constitutes an appointment of the Judge to the other High Court, Article 219 comes into play and, therefore, the transferred Judge must, before he enters upon his office in that High Court, make or subscribe an oath or affirmation according to the prescribed Form.

911. *It is necessary to observe that the appointment to the other High Court involved in the order of transfer is an appointment attributable to the power under clause (1) of Article 222, and cannot be regarded as an appointment under clause (1) of Article 217. Whereas in the latter the Constitution requires consultation with the Chief Justice of India, the Governor of the State and the Chief Justice of the High Court, in the case of an appointment by transfer*

the Chief Justice of India alone is involved in the consultation. The framers of the Constitution evidently considered it unnecessary to include other functionaries. If they had to be included, they would have consisted of the Governor of the State and the Chief Justice of the High Court to which the Judge was originally appointed as well as the Governor of the State and the Chief Justice of the High Court to which the Judge was being transferred. It was apparently considered that the consultation with the Chief Justice of India would suffice to take into account the relative interests of the two High Courts and the President would take into account the interests of the two States concerned. In this regard, while there is no constitutional requirement expressly mentioned in clause (1) of Article 222, it is always open to the President and the Chief Justice of India to make necessary enquiries of the two States and the two High Courts affected by the transfer. The merit of involving the Chief Justice of India alone in the consultative process under clause (1) of Article 222 lies in this that the process of consultation can be more expeditiously completed and is to be preferred to the inevitably protracted process called for by a constitutional requirement involving two States and two High Courts. Whereas the Chief Justice of India can informally ascertain the views of the Chief Justices of the High Courts and satisfy himself whether he should advise in favour of the transfer, the President can similarly ascertain the views of the two States. The need for a formal presentation before the President of advice from the Chief Justices of the two High Courts, from the Governors of the two States and from the Chief Justice of India is thus eliminated."

(Underlines supplied)

87. We have carefully perused the said observations. Even in this case, the Hon'ble Apex Court was considering the scope of

powers conferred on the Hon'ble President of India under clause (1) of Article 222 of the Constitution of India. It may be noted here that even in this decision, the Hon'ble Judges of the Apex Court recorded separate opinions. The majority view in the case of ***Sankalchand Sheth*** (supra) was considered that no order of transfer can be passed without having an effective consultation with the Hon'ble Chief Justice of India. Different judgments were rendered by Hon'ble Judges. However, by majority of six against one, the Apex Court held that consent of the Judge concerned was not required to be taken before his transfer under clause (1) of Article 222 and only P.N. Bhagwati, J maintained his earlier opinion rendered in ***Sankalchand Sheth*** (supra). All the seven Hon'ble Judges held that the power of transfer must be exercised in public interest and transfer by way of punishment is not covered by clause (1) of Article 222 of the Constitution of India. The Apex Court proceeded on the footing that effective consultation with the Chief Justice of India was necessary.

88. Paragraphs 909 to 911 are part of the opinion rendered by R.S. Pathak, J. In the earlier Judgment in the case of ***Sankalchand Sheth*** (supra), P.N. Bhagwati, J, V.R. Krishna Iyer, J also dealt with the issue as to when an order of transfer

under clause (1) of Article 222 becomes operative. Their view was that the order of transfer becomes effective when the concerned Judge takes/assumes the charge of the post of a Judge of the transferee Court and till then, he continues to be the Judge of the original High Court. After having perused paragraphs 909 to 911 above, we are of the considered view that the issue when the transfer order becomes operative is not at all considered by the Apex Court in the decision of the Larger Bench. The said issue is specifically considered by two Hon'ble Judges in the earlier case. Therefore, in our view, the observations made in the aforesaid paragraphs cannot be read in the way the petitioner appearing in person in W.P.No. 6380/2019 wants us to read. The same do not constitute any binding precedent on the issue.

89. Therefore, to conclude, if an order of transfer is passed in exercise of power under clause (1) of Article-222 of the Constitution of India by the President of India, such transfer actually takes place only when the judge who is transferred makes and subscribes oath or affirmation in accordance with Article 219 of the Constitution of India, as a judge of the High Court to which he is transferred. Unless he takes oath or

affirmation as a Judge of the transferee High Court, it cannot be said that he has assumed or took charge of his office and has became a judge of the High Court to which he is transferred. Even after receiving an order of transfer, he does not cease to be a Judge of the High Court to which he originally appointed. He ceases to be a Judge of the original High Court only when he takes oath or affirmation as a Judge of transferee High Court. Thus, in the present case, Hon'ble Shri. Justice Raghvendra S. Chauhan who was transferred by an order dated 8th November, 2018 in exercise of the power under clause (1) of Article 222 of the Constitution of India which provided that he shall assume the charge of his office in the transferee High Court on or before 22nd November, 2018, did not cease to be a Judge of this Court, till he made/subscribed the oath or affirmation as a Judge of the High Court of Judicature at Hyderabad. He continued to be a Judge of this Court at least till 15th November, 2018 and therefore, when the meetings of the Permanent Committee as well as the Full Court were held, he was entitled to participate in those meetings as he was a judge of this Court. He was well within his powers to participate in the said proceedings.

Submission: Cut off of 50% marks was illegally fixed:

90. Another specific submission was made by some of the petitioners and in particular, the petitioner appearing in person in W.P.No.6380 of 2019. The said submission is that cut off of 50 marks was illegally fixed for considering the cases for designation as Senior Advocates. His submission was that the same was contrary to the decision of the Calcutta High Court in the case of ***Debasish Roy –vs- The High Court at Calcutta and another*** *(supra)*. We have, therefore, carefully perused the decision of the Division Bench of Calcutta High Court. That was a case where the challenge was to be designation of the Senior Advocates. The petitioner therein specifically challenged the bench mark of 60 marks fixed by the Permanent Committee. It is necessary to refer to the relevant paragraph which deals with the said issue of bench mark. The submissions made before the Calcutta High Court are noted in detail. The relevant part of the submission reads thus:

> *"The next substantial point made by Mr. Roy was that the stipulation in paragraph 20 of the guidelines that in a deserving case the Permanent Committee may relax the benchmark of 60 marks up to a maximum of 10 marks cannot claim any justification from the Advocate 's Act, 1961 or from the Indira*

Jaising case. What is to be considered as a deserving case has not been specified. As far as the points or marks for assessment are concerned, our guidelines are identical to the scheme pronounced by the Supreme Court in paragraph 73.7 of the said judgment. But there is neither any stipulation in the judgment that 60 marks or points have to be obtained to be designated a Senior Advocate nor any provision for relaxation of marks or points……..."

"…………By prescribing qualifying marks you are adding a condition which is non-existent in the Supreme Court Judgment. Secondly, you have already chosen a standard or benchmark below which you cannot descend even in deserving cases. Now, this kind of a subjective standard is not prescribed by the said Act. The only standard prescribed in the Act is that in the opinion of the Supreme Court or the high Court the advocate has to have ability, standing at the Bar or special knowledge, experience etc. The type or level of such ability or standing has not been set. The provision for making exception by relaxation of benchmark in some deserving cases is ultra vires the Act. In our opinion the stipulation of 60 marks appears to be invalid. But the point regarding 60 marks' benchmark was neither raised in the pleadings nor argued. Hence, our observations regarding the same is 'orbiter dicta'. We do not make any order pertaining to it.. . . . . "

(Underlines supplied)

Hence, the Calcutta High Court has observed that whatever observations made therein about the bench mark are only *obiter dicta* and the Court was not making any order pertaining to it. What is quoted above is found in the Judgment

of I.P. Mukerji, J. The other Judge Amrita Sinha, J while concurring with I.P. Mukerji, J has recorded her own opinion in which there is no finding on this aspect. Therefore, there is no finding recorded by the Division Bench of the Calcutta High Court regarding the illegality of bench mark of 60 marks fixed by the Permanent Committee. On the contrary, it is specifically mentioned that whatever the observations made on the point are *obiter dicta.*

91. On this aspect, we are referring to the documents of which an inspection was provided to the parties and their Advocates. The average marks out of 100 are tabulated along with the marks assigned by individual members of the Permanent Committee in a booklet. An argument was made by the petitioner regarding very high marks assigned to 16th respondent who has secured an average marks of 71 out of 100. We must note here that another candidate at serial No.51 also secured average marks of 71 out of 100. Various other candidates were also given high marks such as, the candidate at Sl.No. 16 got 69 marks, the candidate at Sl.No. 29 got 68.60 marks, the candidate at Sl.No.55 was assigned 67.60 marks and candidate at Sl.No.60 has secured 68.25 marks. Writ Court cannot decide the issue

whether a candidate was assigned more marks than he/she deserved.

92. We have carefully perused the minutes of the Full Court meeting. The minutes do not refer to fixing of any benchmark. We have already discussed that the minutes show that all factors were considered by the Full Court. It may be noted that eighteen candidates who have been selected by the Full Court for designation as Senior Advocates secured more than 50 marks. But, two candidates in whose case the decision was deferred had also more than 50 marks. One of the two candidates had, in fact, secured 68.60 marks. The other candidate whose case was also deferred had secured 56.40 marks. If candidates are arranged in the order of merit as per their marks, perhaps, the aforesaid candidate who had secured 68.60 marks would have been in first five of the list. This itself shows that no bench mark was fixed. Moreover, the resolution itself does not lay down that any such bench mark of 50 marks was fixed by the Full Court. It is only an inference drawn by the petitioners on the ground that those who have been designated had secured more than 50 marks and the cases of fifteen candidates who had secured marks between 45 to 50 were deferred by giving them benefit by

recording that bar of two years as specified under sub-rule (10) of Rule-6 will not operate. Hence, the contention of the petitioner regarding the bench mark cannot be accepted and even if such an inference is to be drawn, the same is inconsistent with the fact that in case of the two candidates who had secured substantially higher marks than 50 marks, the final decision was deferred and in fact their cases were not considered. Therefore, the argument that the bench mark of 50 was fixed cannot be accepted as it is not consistent with what is recorded in the minutes. What transpired in the Full Court meeting of the constitutional functionaries cannot be determined on the basis of an inference when the decision itself does not refer to fixing of any such bench mark. Thus, our view is that there is no material on record to show that any bench mark of fifty marks was fixed. However, in a given case, when the members of the Full Court agree with the point based assessment made by the Permanent Committee, it is quite possible to fix a bench mark by providing that those who have secured points above the bench mark will be designated as Senior Advocates. However, we are not recording any final finding on this aspect.

Submission: Process of assigning points was done hurriedly.

93. On the same aspect, now we again turn to the decision of the Apex Court in the case of ***Indira Jaising*** (supra). As per the guidelines of the Apex Court issued under Article-142 of the Constitution of India, the Permanent Committee is required to make overall assessment on the basis of the points based formula and such overall assessment is to be placed before the Full Court.

94. We must note here how the overall assessment was made. There is no dispute that the interviews/interactions were made with an individual candidates from 22nd or 23rd October, 2018 to 31st October, 2018. The statement of compiled information and data with regard to designation of Senior Advocates was placed before the Permanent Committee which consisted of several columns such as, the names of the proposer, the number of years of practice, the reported cases as per sub-rule (2) of Rule-6 of the Senior Advocates Rules, reported and unreported cases, legal aid works done, publications, participation in seminars or conferences, association with the faculty of law, pro-bono work, the suggestions/views received from the stakeholders etc. The

last column was of ‘remarks’ in which an additional information was furnished and the comments were also recorded therein such as supporting documents not submitted, the judgments of which the copies were given were of the period prior to the year 2013 etc. In one case, there is a remark that the candidate worked as Assistant Editor of the Indian Law Reports for a period of three years.

95. Thus, when the interactions went on for a period of 10 days till 31st October, 2018 the members of the Permanent Committee interviewed/interacted with individual candidates and the entire record of the candidates was before the Permanent Committee. Apart from the charts prepared by the Permanent Secretariat, the Committee had an access to the entire record. Therefore, when for a period of 10 days, the candidates were interviewed, all the members of the Committee had entire record of the candidates before them. Therefore, there is nothing wrong if all of them were ready with their individual overall assessment on the basis of the points based format by 11th November, 2018. Though the interview/ interactions were completed on 31st October, 2018, the meeting of the Permanent Committee was held on 11th November, 2018 i.e., 10 days after

the last interaction. Therefore, the interactions/interviews went on for ten days and eleven days thereafter, the meeting of the Committee was held in which it was recorded that “Final awarding of marks” has been completed. This sentence does not mean that each member of the Committee did the exercise of awarding marks on 11th November 2018 itself. On the contrary, it indicates that the process which began earlier was completed on that day. Therefore, it was not as if that in the meeting held on 11th November, 2018 at 6.00 p.m, for the first time, members of the Permanent Committee applied their minds and awarded final marks. We have already recorded a finding that three members of the Permanent Committee are highest constitutional functionaries who have long experience of doing judicial and administrative work. The 4th member being the learned Advocate General has also a very rich experience and standing in the profession of law. Even the 5th member was a distinguished Senior Advocate having long experience at the Bar. All that is recorded in the meeting of the Permanent Committee held on 11th November, 2018 is that the final awarding of marks has been completed. It is not as if that after interviews were concluded on 31st October, 2018, the Committee met overnight

and hurriedly assigned the final marks. All that Permanent Secretariat was required to do was to do the tabulation of marks which was made ready on 12th November, 2018. Such tabulation work was done and signed by the members of the Committee on 12th November 2018. As the marks assigned by all the members of the Committee were ready on 11th November, 2018, by use of computers, preparing tabulated statement of points within twenty-four hours was a very easy task for the Secretariat. The argument that the permanent committee did the process very hurriedly has no merit.

Submission: Even proposals submitted by sitting Judges were overlooked.

96. One of the submissions canvassed was that even the sitting judges had made recommendations which were not favourably considered. This submission was made purportedly to support the plea of discrimination which attracts Article 14 and also the plea that all is not well about the decision making process adopted by the Full Court.

97. For dealing with this submission, we must go back to the directions contained in the decision of the Apex Court in the case

of ***Indira Jaising.*** Paragraph 73.4 refers to all the applications including written proposals made by the Hon'ble Judges which are to be submitted to the Secretariat. On perusal of paragraph 73.4 to 73.10, it appears that the Apex Court has not prescribed a separate procedure for the recommendations received from the sitting Judges. There is no additional weightage given to the proposals made by the sitting Judges. On the contrary, the scheme of the directions issued by the Apex Court is that all the Advocates whose names have been proposed for designation either by themselves or by senior advocates or by Hon'ble sitting judges are treated on par and all of them are required to be subjected to overall assessment by the Permanent Committee, as provided in paragraph 73.7. Even if Rule-4 of the Senior Advocates Rules provides for written proposal to be made by the Chief Justice or any sitting judges of this Court, it is crystal clear that the cases of all the Advocates which are recommended by the Chief Justice or by sitting judges, Advocate General of the State and other Senior Advocates practicing in this Court are not treated differently and all of them are required to be subjected to the same assessment. Therefore, there is no merit in the said submission.

Submission: It was the duty of the Full Court to consider cases of all candidates individually:

98. There is one more submission made to the effect that the Full Court did not consider the individual cases of all the Advocates in respect of whom proposals were received and only those cases which were recommended by the Permanent Committee were considered by the Full Court. One of the learned counsel went to the extent of observing that most of the Hon'ble Judges did not go against the wishes of the Hon'ble the Chief Justice who had already fixed cut off of 50 marks. These arguments do not merit acceptance for the various reasons set out hereunder:

(a) After analyzing the directions issued by the Apex Court in the decision of the ***Indira Jaising,*** we have already held that overall assessment made by the Permanent Committee of all the candidates is required to be placed before the Full Court;

(b) In fact, the directions issued by the Apex Court do not specifically contemplate any recommendations of particular candidates to be made by the Permanent Committee on its own and the job of the Permanent

Committee is confined to making overall assessment of all the candidates as per the direction contained in paragraph 73.7. The marks assigned by the Permanent Committee can be called as recommendation in a sense. In the facts of the case, the Permanent Committee had not made recommendation of any names;

(c) Perusal of clause (a) of Resolution made by the Full Court on 15th November 2019 as item No.3 specifically records that "after taking note of the norms/guidelines formulated by the Supreme Court of India in paragraphs 73.1 to 73.11 and the extensive exercise carried out by the Permanent Committee, the Full Court has deliberated over the issue of designation of Senior Advocates as per the statement of Point Based Assessment provided by the Permanent Committee". Thus, the point based assessment made by the Permanent Committee of all the candidates was before the Full Court and was considered by the Full Court;

(d) The Full Court was not bound by the point based assessment. If any of the members of the Full Court

were not satisfied with the point based assessment made by the Permanent Committee, the concerned Hon'ble Judge could always have relied upon the other records and expressed a different view. Clause (g) of the minutes of item No.3 records dissent of three Hon'ble Judges in the sense that they requested for a voting. The fourth Judge expressed dissent only about dispensing with the disqualification under Rule 6 (10). Out of total 33 sitting Judges, 31 attended the meeting. There was no dissent or dissatisfaction expressed by any other 27 or 28 members of the Full Court about the point based overall assessment made by the Committee;

(e) Clause (b) of the Resolution on item No.3 specifically records that the Full Court has taken note of the fact that one of the parameters for the point based assessment is of the publication by the applicants which carries 15 points out of 100%, but substantial number of practicing Advocates may not be having the of publications to secure the points on that score. Thus,

the Resolution clearly shows that the Full Court has not blindly followed the point based assessment;

(f) Clause (c) of the Resolution on item No.3 which resolves to grant designation to 18 Advocates specifically records that **“after taking into account the cumulative effect of all the relevant factors and the points awarded to the applicant-advocates in Point Based Assessment, the Full Court has resolved to designate the following advocates xxxxxxx”** This shows that apart from point based broad assessment made by the permanent Committee, the other relevant factors were also considered;

(g) The full Court is not bound by the broad or overall point based assessment made by the Permanent Committee and it may or may not follow the said assessment;

(h) The Full Court consists of Hon’ble Judges of this Court, most of them must be familiar with almost all the applicants. In any case, there is always exchange of views and thoughts amongst the members of the Full Court;

(i) There is nothing on record to show that either the Hon'ble the Chief Justice or the Full court had fixed 50 marks as cut off. That is not reflected from the minutes;

(j) It is unfortunate that a bald allegation is made that many Hon'ble Judges did not dare to go against the views of the Hon'ble Chief Justice. This argument is made as the petitioner is not aware how Full Court meetings are conducted. Such unfounded allegation is made by ignoring the status of High Court Judges.

Submission: There are no reasons recorded for designating eighteen Advocates and for deferring the case of fifteen Advocates without operation of bar of two years under Rule 6 (10) and for deferring the final decision in relation to the two Advocates.

99. The aforesaid argument proceeds on a completely wrong assumption that the Full Court was exercising either quasi judicial or judicial powers and was, therefore, obliged to records the reasons. Even sub-section (2) of Section 16 of the Advocates Act does not contemplate that the High Court or the Supreme Court recording reasons for coming to the conclusion/opinion that a particular Advocate, by virtue of his ability, standing at the Bar or special knowledge or experience in law deserves such

designation. What is important is the formation of such an opinion. As per the directions of the Apex Court, overall assessment is to be made by a Committee consisting of the Chief Justice, two senior most Judges of the High Court, the learned Advocate General and a member of the Karnataka High Court Bar nominated by other four members of the Committee. The said Committee looked at the various materials placed before it by the permanent secretariat such as, pro-bono work, formulation of legal submissions by the Advocates as can be seen from the Judgments as well as publication made by them etc. The Committee made separate interaction with all the candidates. Thereafter, it made overall assessment and assigned the points. Though the broad assessment is not binding on the Full Court, it always aids and assists the members of the Full Court for formation of an opinion, if any, as contemplated by sub-section (2) of Section-16 of the Advocates Act. Even if some of the members of the Full Court do not accept the said assessment, the said members can always have an option to see the record of the candidates. They always have personal knowledge about the ability of the Advocates and therefore, it is always open for them to express their opinion that

no such opinion as provided in Sub-Section (2) of Section 16 of the Advocates Act can be formed in respect of a particular candidate. It is not necessary for the Full Court to record any reason for granting designation or for rejecting the nominations. The very fact that certain nominations were rejected itself shows that the Full Court was unable to form an opinion which is required to be formed under sub-section (2) of Section 16 of the Advocates Act in respect of the said Advocates/applicants.

Submission : The dissent of three Judges was not answered and voting by secret ballot was not conducted.

100. Again, this submission ignores the fact that the Full Court was not discharging judicial or quasi judicial function. Out of 31 Hon'ble Judges present only three demanded ballot. One Hon'ble Judge dissented on the other point but remaining Judges did not approve the dissent. No reasons were required to be recorded by the Full Court for not accepting the dissent.

101. It is alleged that the three Hon'ble Judges demanded voting by secret ballot. The careful perusal of the minutes show that it is merely recorded that they demanded voting. It is not at all recorded that the three Hon'ble Judges demanded voting by

secret ballot. The other 28 Judges approved the resolution. Only one of them had objection regarding relaxation of condition under Rule 6 (10). Thus, by a strong majority, the impugned resolution was passed by the Full Court. We have already recorded a finding on this aspect. The argument that merely because a few Hon'ble Judges who were in minuscule minority demanded voting by secret ballot, the Full Court ought to have ordered voting by secret ballot, does not merit acceptance. There is a specific provision in paragraph 73.9 of the directions of the Apex Court that voting by secret ballot will not normally be resorted to by the Full Court except when it is unavoidable. Therefore, merely because two or three Hon'ble Judges which may not even constitute even 15% majority, demanded a secret ballot, it cannot be said that the secret ballot became unavoidable. On this aspect, we have already recorded a detailed finding in paragraph 63 above.

<u>The submissions made by the learned Senior Counsel appearing for the petitioner in W.P.No.35595 of 2019.</u>

102. In the earlier part of the judgment, we have deliberately reproduced in verbatim the very detailed written submissions made on behalf of the petitioner in W.P. No. 35595 of 2019. We

have reproduced the said written submissions with a view to point out that the submissions have been made across the Bar by ignoring the fact that neither the Permanent Committee nor the Full Court exercise judicial or quasi-judicial powers while deciding the applications for designation. For grant of designation, the formation of an opinion as contemplated by sub-section (2) of Section 16 of the Advocates Act must exist. It is obvious that even the formation of opinion has to be on the basis of material. As held earlier, the Permanent Committee's function is to make point based assessment. Full Court is not required to record reasons for dealing with the applications for designation. Moreover, the issue or adequacy of the material considered by the Full Court cannot be gone into by the writ Court. In fact, the submissions are made as if this Court exercising jurisdiction under Article 226 of the Constitution of India has an appellate jurisdiction over the entire process of designation. Most of the submissions made by the said petitioner, which we have reproduced earlier, are not even worthy of consideration.

103. With greatest respect to the petitioner in the said writ petition, the process of designation of the Advocates as Senior Advocates by the Full Court and the process of making the

overall assessment by the Permanent Committee cannot be equated with conduct of an examination. It is on overall assessment made by Permanent Committee consisting of four higher constitutional functionaries and a Senior Advocate by using their vast experience based on various materials such as the documents furnished by the applicants themselves, formulation of legal submission by them as reflected from the judgments, publications made by them, views of stakeholders and interview/interactions with the candidates etc. It is this broad based assessment which is placed before the Full Court in respect of all the eligible applicants.

104. On this aspect, it is necessary to refer to certain decisions of the Apex Court. The first decision is in the case of ***Madan Lal and others –vs- State of J & K and others*** (supra). The issue before the Apex Court was regarding challenge to the process of selection of Munsiffs undertaken by the Public Service Commission. The written examination was conducted to select the candidates who are eligible for *viva voce* and that the *viva voce* was conducted by four members of the Commission and a

sitting Judge of the High Court. In paragraph 10 and 17 of the said decision, the Apex Court has held thus:

> "***10.*** *Therefore, the result of the interview test on merits cannot be successfully challenged by a candidate who takes a chance to get selected at the said interview and who ultimately finds himself to be unsuccessful. It is also to be kept in view that in this petition we cannot sit as a court of appeal and try to reassess the relative merits of the candidates concerned who had been assessed at the oral interview nor can the petitioners successfully urge before us that they were given less marks though their performance was better. It is for the Interview Committee which amongst others consisted of a sitting High Court Judge to judge the relative merits of the candidates who were orally interviewed, in the light of the guidelines laid down by the relevant rules governing such interviews. Therefore, the assessment on merits as made by such an expert committee cannot be brought in challenge only on the ground that the assessment was not proper or justified as that would be the function of an appellate body and we are certainly not acting as a court of appeal over the assessment made by such an expert committee.*
>
> ***17.*** *In the light of what is stated above, while dealing with Contention 1, this contention also must fail. The petitioners subjectively feel that as they had fared better in the written test and had got more marks therein as compared to the selected respondents concerned, they should have been given more marks also at the oral interview. But that is in the realm of assessment of relative merits of candidates concerned by the expert committee before whom these candidates appeared for the viva voce test. Merely on the basis of petitioners' apprehension or suspicion that they were deliberately given less marks at the oral interview as compared to the rival candidates, it cannot be said that the*

> *process of assessment was vitiated. This contention is in the realm of mere suspicion having no factual basis. It has to be kept in view that there is not even a whisper in the petition about any personal bias of the Members of the Interview Committee against the petitioners. They have also not alleged any mala fides on the part of the Interview Committee in this connection. Consequently, the attack on assessment of the merits of the petitioners cannot be countenanced. It remains in the exclusive domain of the expert committee to decide whether more marks should be assigned to the petitioners or to the respondents concerned. It cannot be the subject-matter of an attack before us as we are not sitting as a court of appeal over the assessment made by the committee so far as the candidates interviewed by them are concerned. In the light of the affidavit-in-reply filed by Dr Girija Dhar to which we have made reference earlier, it cannot be said that the expert committee had given a deliberate unfavourable treatment to the petitioners. Consequently, this contention also is found to be devoid of any merit and is rejected."*
>
> (Underlines supplied)

105. The petitioner in writ petition No.35595 of 2019 wants this Court to sit as a Court of appeal and to record a finding that the assessment made by the Permanent Committee is erroneous and the decision of the Full Court is erroneous. It is not permissible for the writ Court to do so. Writ Court can go only into decision making process. Unless there is a gross illegality associated with the process or existence of bias is proved, no interference is called under Article 226 of the Constitution of

India. Interference can be made only when the decision arrived at is so arbitrary and capricious that no reasonable person could have arrived at it. No such case is established in these matters. The assessment was made by the five experienced members of the Committee out of which, the four are constitutional functionaries. Therefore, the assessment on merits made by such a expert Committee cannot be brought into challenge unless there are serious and well founded allegations of bias or violation of any specific provision of law.

106. In the case of ***Union of India and others –vs- Kali Dass Batish and another*** (supra), the Apex Court has referred to a passage in the famous commentary of D. Smith's judicial review of Administrative Action. In paragraph 18 of the said decision, the passage in the said book is quoted. In paragraph 19, the Apex Court has specifically observed that it was reiterating the observations and it was expecting the Courts which are invested with the power of judicial review to follow the same. Paragraphs 18 and 19 of the said decision read thus:

> *"**18.** Finally, this Court emphasised judicial restraint by citing with approval a passage in de Smith's Judicial Review of Administrative Action (vide SCC p. 316, para 23) as under:*

> *"Judicial self-restraint was still more marked in cases where attempts were made to impugn the exercise of discretionary powers by alleging abuse of the discretion itself rather than alleging non-existence of the state of affairs on which the validity of its exercise was predicated. Quite properly, the courts were slow to read implied limitations into grants of wide discretionary powers which might have to be exercised on the basis of broad considerations of national policy."*
>
> *Based on this reasoning, it was acknowledged that the transfer of a Judge of the High Court based on the recommendation of the Chief Justice of India would be immune from judicial review as there is "an inbuilt check against arbitrariness and bias indicating absence of need for judicial review on those grounds. This is how the area of justiciability is reduced …….9 "*
>
> ***19.*** *We, respectfully, reiterate these observations, and expect them to be kept in mind by all courts in this country invested with the power of judicial review."*

107. In the case of ***Utkal University –vs- Dr. Nrusingha Charan Sarangi and others***[14]***,*** the Apex Court, while dealing with the recruitment process involving the interview and Viva Voce, has laid down the scope of interference by the Courts in such cases. The Apex Court dealt with the issue of a bias in paragraphs 9 and 10 wherein it is held thus:

> ***"9.*** *The last contention of the first respondent which has been accepted by the High Court is that of bias*

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[14] (1999) 2 Supreme Court Cases 193

on the part of one of the members of the Selection Committee. The so-called bias, as set out in the original petition, is that one of the experts was a member of an organisation which brought out a magazine of which the selected candidate was the Editor while one of the members of the Selection Committee was on the Editorial Board. Both the University as well as the selected candidate have pointed out that this fact was known to the first respondent throughout. He did not, at any time, object to the composition of the Selection Committee. He objected only after the selection was over and he was not selected. This would amount to waiver of such objection on the part of the first respondent. Reliance is placed on a decision of this Court in G. Sarana (Dr) v. University of Lucknow [(1976) 3 SCC 585 : 1976 SCC (L&S) 474 : (1977) 1 SCR 64] in which this Court found that despite the fact that the appellant knew all the relevant facts, he had voluntarily appeared before the Committee and taken a chance of having a favourable recommendation from it. Having done so, it was not open to him to turn round and question the constitution of the Committee. A similar view has been taken by this Court in the case of U.D. Lama v. State of Sikkim [(1997) 1 SCC 111, 119] SCC at p. 119.

10. *What is more, we fail to see how on account of one of the experts being a member of an organisation or being on the Editorial Board of a magazine brought out by that organisation, he would necessarily be favourably inclined towards the Editor of that magazine. There is no allegation of any personal relationship between the member of the Selection Committee and the candidate. Not unnaturally, the member concerned of the Selection Committee has taken strong exception to the charge of bias. In his letter addressed to the University dated 10-5-1994, he has pointed out that he was, in fact, more closely connected with the first respondent, Dr Nrusingha Charan Sarangi than the selected candidate. He has*

pointed out that the first respondent hails from his native place, belongs to the family of his priest and the first respondent has dedicated his book to the said member. All this is prior to the said interview. He has also pointed out that he agreed to be associated with the said Shri Jagannath Gabesana Parishad only because his teacher is one of its founders. Another expert on the Selection Committee, Dr J.B. Mohanty, has also addressed a letter dated 21-1-1994 to the University pointing out that the selected candidate was selected on merit after taking into consideration his academic record, Honours teaching experience, research activities and performance at the interview. The first respondent, although he was given time to file a counter-affidavit here after all these documents were disclosed, has not filed any reply. Allegations of bias must be carefully examined before any selection can be set aside. In the first place, it is the joint responsibility of the entire Selection Committee to select a candidate who is suitable for the post. When experts are appointed to the Committee for selection, the selection should not be lightly set aside unless there is adequate material which would indicate a strong likelihood of bias or show that any member of the Selection Committee had a direct personal interest in appointing any particular candidate. The expert in question, in the present case, had no personal interest in the selection of any particular candidate. It is not even alleged by the first respondent that he had any such personal interest in the selection of the candidate who was selected. The mere fact that the expert as well as one of the candidates were members of the same organisation and connected with the magazine brought out by it would not be sufficient, in the facts and circumstances of the present case, to come to a conclusion that the selector had a specific personal interest in the selection of that candidate. The experts, in the present case, are experts in the Oriya language and are men of stature in their field. The candidates who would be considered for selection by

the Selection Committee would also be candidates who have some stature or standing in the Oriya language and literature, looking to the nature of the post. Any literary association in this context, or any knowledge about the literary activities of the candidates would not, therefore, necessarily lead to a conclusion of bias. Looking to the circumstances of the present case, it is not possible to come to a conclusion that the Selection Committee was biased in favour of the candidate selected."

(Underlines supplied)

108. In the case of ***Dalpat Abasaheb Solunke and others – vs- Dr. B.S. Mahajan and others*** (supra), the Apex Court again dealt with a similar issue. Firstly, the Apex Court dealt with the scope of the judicial review in paragraph 12, which read thus:

*"**12.** It will thus appear that apart from the fact that the High Court has rolled the cases of the two appointees in one, though their appointments are not assailable on the same grounds, the court has also found it necessary to sit in appeal over the decision of the Selection Committee and to embark upon deciding the relative merits of the candidates. It is needless to emphasise that it is not the function of the court to hear appeals over the decisions of the Selection Committees and to scrutinize the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the selection, or proved mala fides affecting*

> *the selection etc. It is not disputed that in the present case the University had constituted the Committee in due compliance with the relevant statutes. The Committee consisted of experts and it selected the candidates after going through all the relevant material before it. In sitting in appeal over the selection so made and in setting it aside on the ground of the so called comparative merits of the candidates as assessed by the court, the High Court went wrong and exceeded its jurisdiction."*

(Underlines added)

109. The Apex Court, in the case of ***Syed T.A. Naqshbandi and others –vs- State of Jammu and Kashmir and others***[15] dealt with the power of review of a decision making process adopted for grant of selection grade and super time scale to the Judicial Officers. In paragraph 7, the Apex Court observed thus:

> *"**7.** We have carefully considered the submissions of the learned counsel appearing on either side, in the light of the governing position of law and the material facts placed on record. Much of the grievance sought to be vindicated seems to be merely born out of certain baseless assumptions and incorrect understanding of events, which took place with their own personal perception of the same, carried away also more by the grievance in not being favoured with due recognition of their so-called entitlements. The grievance in this regard is sought to be further justified by adopting one or the other circumstances in a manner to suit their own stand rather than viewing the relevant facts in their proper perspective or on an objective process of understanding. Assumed grievances apart, it must be sufficiently*

[15] (2003) 9 SCC 592

substantiated to have firm or concrete basis on properly established facts and further proved to be well justified in law, for being countenanced by the court in exercise of its powers of judicial review. As has often been reiterated by this Court, judicial review is permissible only to the extent of finding whether the process in reaching the decision has been observed correctly and not the decision itself, as such. Critical or independent analysis or appraisal of the materials by the courts exercising powers of judicial review unlike the case of an appellate court, would neither be permissible nor conducive to the interests of either the officers concerned or the system and institutions of administration of justice with which we are concerned in this case, by going into the correctness as such of ACRs or the assessment made by the Committee and approval accorded by the Full Court of the High Court.

(Underlines supplied)

110. The above dictum of the Apex Court, to a great extent, applies to the challenge made by the Petitioners in Writ Petition No. 35595 of 2019, inasmuch as, in this case, the assessment was made by the Committee of the High Court. Paragraph-8 of the above decision is also relevant which reads thus:

"8. *Reliance placed upon the recommendations of Justice Jagannatha Shetty Commission or the decision reported in All India Judges' Assn. v. Union of India [(2002) 4 SCC 247 : 2002 SCC (L&S) 508] or even the resolution of the Full Court of the High Court dated 27-4-2002 is not only inappropriate but a misplaced one and the grievances espoused based on this assumption deserve a mere mention only to be rejected. The conditions of service of*

> *members of any service for that matter are governed by statutory rules and orders, lawfully made in the absence of rules to cover the area which has not been specifically covered by such rules, and so long as they are not replaced or amended in the manner known to law, it would be futile for anyone to claim for those existing rules/orders being ignored yielding place to certain policy decisions taken even to alter, amend or modify them. Alive to this indisputable position of law only, this Court observed at SCC p. 273, para 38, that "we are aware that it will become necessary for service and other rules to be amended so as to implement this judgment". Consequently, the High Court could not be found at fault for considering the matters in question in the light of the Jammu and Kashmir Higher Judicial Service Rules, 1983 and the Jammu and Kashmir District and Sessions Judges (Selection Grade Post) Rules, 1968 as well as the criteria formulated by the High Court. Equally, the guidelines laid down by the High Court for the purpose of adjudging the efficiency, merit and integrity of the respective candidates cannot be said to be either arbitrary or irrational or illegal in any manner to warrant the interference of this Court with the same. <u>Even dehors any provision of law specifically enabling the High Courts with such powers in view of Article 235 of the Constitution of India, unless the exercise of power in this regard is shown to violate any other provision of the Constitution of India or any of the existing statutory rules, the same cannot be challenged by making it a justiciable issue before courts.</u> The grievance of the petitioners, in this regard, has no merit of acceptance.*
>
> (Underlines supplied)

One of the respondents relied upon a latest decision of the Apex Court in the case of ***Municipal Council Neemuch*** (supra). In

paragraph No.17 (of the original judgment), the Apex Court has reiterated the position of law which reads thus:

> ***"17.** It could thus be seen that an interference by the High Court would be warranted only when the decision impugned is vitiated by an apparent error of law, i.e., when the error is apparent on the face of the record and is self evident. The High Court would be empowered to exercise the powers when it finds that the decision impugned is so arbitrary and capricious that no reasonable person would have ever arrived at. It has been reiterated that the test is not what the court considers reasonable or unreasonable but a decision which the Court thinks that no reasonable person could have taken. Not only this but such a decision must have led to manifest injustice."*

(Underline supplied)

In the light of the aforesaid observations of the Apex Court, the submissions made by the petitioner in the said writ petition will have to be rejected regarding the challenge to the decision making process.

Challenge to the Rules:

111. As far as the challenge to certain Rules is concerned, we have already clarified the position that the Permanent Committee is required to make the broad assessment of all the eligible candidates and the Permanent Committee has no power of making recommendation of particular candidate on its own. The

broad assessment made by the Permanent Committee in respect of all eligible candidates must be placed before the Full Court.

Permanent Secretariat did not collect information and data:

112. Another grievance made is regarding failure of the Permanent Secretariat to collect information about the high ethical standards both inside and outside the Court maintained by the Advocates. What is mentioned in paragraph 73.4 of the guidelines of the Apex Court regarding compilation of the relevant data and information by the Permanent Secretariat regarding the reputation, conduct, integrity of the Advocates does not mean that the Permanent Secretariat is empowered to make its own investigation. The job of the Permanent Secretariat is to compile of the data on the basis of the applications/proposals and the documents submitted along with the same. The views/suggestions of the stakeholders will have to be compiled. The last sentence of paragraph 73.4 indicates that the Permanent Committee has a power to direct the Permanent Secretariat to collect the information/data and the source from which it could obtained. It is not mandatory for the Permanent Committee to issue such directions as the stakeholders such as the State Bar Council, Advocates' Associations, Advocates,

litigants etc., always have an opportunity to submit their views/suggestions on the Advocates who have applied for designation. The views/suggestions made by the stakeholders are also available to the Permanent Committee. Moreover, the data and documents submitted by the applicants along with their applications are also available. Therefore, in every case, the Permanent Committee need not issue a direction to the Permanent Secretariat to collect the data from particular sources. If the data already available is sufficient to make overall assessment, it is not necessary for the Committee to issue such direction to the Permanent Secretariat in each and every case. It is not in dispute that the last date for submitting the applications as per the advertisement was 31st August, 2018. Thereafter, there was sufficient time for the Permanent Secretariat to compile the data submitted along with the applications/proposals. We have already referred to the detailed chart prepared by the Permanent Secretariat incorporating various particulars in brief such as pro-bono work, number of reportable judgments, association with law faculty, views of stakeholder etc. The inspection of the chart also was given to the Advocates appearing in these cases. Therefore, no fault can be found with

the Secretariat, as no directions were given by the Permanent Committee to collect particular data. Moreover, the issue of adequacy of material before the Permanent Committee cannot be gone into by writ Court. In this case, it cannot be said that there was no material before the Permanent Committee.

Submission: Legitimate expectation of the Bar has been bellied.

113. Nextly, it is contended that the legitimate expectation of the Bar has been bellied. We fail to understand as to how the question of legitimate expectation arises in the process of designating the Advocates as Senior Advocates. Hence, there is no substance in the said submission.

Submission: Allegation of bias against the learned Advocate General.

114. In one of the petition, there is a specific averment that though the 10th and 14th respondents were recommended by the learned Advocate General, he also participated in the process of assessing the performances of 10th respondent Shri. K.N. Phaneendra and 14th respondent Shri A.S. Ponnanna. Perusal of the marks assigned by the individual members of the

Permanent Committee will show that against the names of these two candidates, there is a specific remark that the Advocate General has "recused" and the leaned Advocate General has not at all assigned any marks to these two candidates. In fact, he seems to have “recused” himself in some other candidates as well in whose cases he may have made recommendations. It is really quite unfortunate that such allegations are made against the learned Advocate General without any basis.

Very peculiar submission:

115. Finally we come to a very peculiar argument canvassed by a designated Senior Advocate appearing for one of the private respondents. Considering the nature of the said submission and the standing of the said Advocate at the Bar, we have not reproduced the same in the earlier part of the judgment. The argument was really astonishing. The argument was that the decision of the Apex Court rendered in the case of ***Indira Jaising*** is *per incuriam* and the first Court headed by Chief Justice of this Court should be bold enough to say so. It is well settled that when a decision rendered by the Apex Court becomes *per incuriam.* It was not substantiated by the learned counsel how

the directions issued by the Apex Court would become *per incuriam.* It is not shown to us that either the directions issued were contrary to a judgment of a larger Bench of the Apex Court or were contrary to express provisions of law. In fact, the directions issued by the Apex Court are under Article 142 of the Constitution of India which bind us. We must know that in a sensitive matter like this most of the members of the Bar have shown great deal of restraint while making the submissions. However, there were instances when some member of the bar on both the sides crossed the limits to some extent.

Submission on clause (e) of the Resolution on item No.3.

116. Now we come to another important issue regarding clause (e) of the Resolution on item No.3 passed by the Full Court by which cases of fifteen Advocates were considered as deferred cases by observing that they may apply in the next exercise of designation along with other applicants without operation of bar of two years under Rule 6(10). Clause (e) specifically records that the Full Court resolved that the fifteen Advocates may not be designated as Senior Advocates for the present. Thus, there is a decision taken not to designate them but a special concession

was granted to them. Rule 6(10) provides that the cases which are not favourably considered by the Full Court may be reviewed/ reconsidered after expiry of the period of two years, as if the proposal is being considered afresh. The fifteen candidates were exempted from the operation of the said Rule. Though it was contended that the said part of the Resolution is illegal, the fifteen Advocates mentioned therein are not made parties to these petitions. However, this issue need not be detain by us, as the directions issued by the Apex Court in the case of ***Indira Jaising*** will always prevail. We have already quoted the directions contained in paragraph 73.10. What will prevail is the direction contained in paragraph 73.10 of the decision of the Apex Court which categorically lays down that the cases which are not favourably considered, may be reviewed after the expiry of two years. It is obvious that if the Full Court takes up for consideration these fifteen cases even before the 14th November, 2020, the Full Court will have to consider the binding directions of the Apex Court contained in paragraph 73.10, unless the same are modified before the said date. Therefore, we are not issuing any direction in this behalf and we are not recording final finding on the aspect.

<u>The case of 12th respondent:</u>

117. Now we come to two specific cases about which certain factual details will be necessary. Firstly, we deal with the case of the 12th respondent. There is a direction issued by the Apex Court in paragraph No.73.11 that in the event a Senior Advocate is guilty of conduct which according to the Full Court, disentitles the Senior Advocate concerned to continue to be the worthy of such designation, the Full Court may review its decision to designate the person concerned and recall the same. There is a specific allegation made against the 12th respondent that in an award dated 20th November 2018, passed by the sole Arbitrator in A.C. No.128 of 2017, there is an adverse finding recorded about his professional competency and his ability to discharge professional obligations. It is also recorded in the said award that the conduct of the said respondent was unprofessional who indulged in making crafty and false charges against the Sole Arbitrator who is a retired Judge of this Court. If the findings recorded by the Arbitrator attain the finality, it is for the Full Court to consider the case for exercise of power under Rule-9 of the Senior Advocates Rules read with paragraph 73.11 of the direction of the Apex Court. However, it is placed on record that

the said Award has been challenged by both the parties which is pending adjudication before the concerned Court of law. In fact, it is pointed out that the claimants had filed a written statement of challenge under Section 13(2) read with Section 12 (3) of the Arbitration and Conciliation Act, 1996. As the said Award is the subject matter of a challenge, we cannot treat the observations of the Sole Arbitrator as the findings which have attained finality. Therefore, we are unable to issue any directions at this stage.

The case of 16th respondent:

118. Now we come to the statement of objections filed by 16th respondent in Writ Petition No.5368-71 of 2019. The process of designation was challenged by four practicing Advocates in the said writ petition who had applied for designation. As can be seen from sub-section (2) of Section-16 of the Advocates Act, standing of a designated Senior Advocate is completely different from any other Advocate. A very high moral and ethical standards are expected to be followed by such a Senior Advocate who is expected to become a role model to the junior and other members of the Bar. Therefore, a designated Senior Advocate is expected to show a restraint while defending the

challenge to his/her designation as a Senior Advocate. Ultimately the challenge is only to the decision making process, the scope of which is very narrow. But, unfortunately 16th respondent has not shown desired restraint, as can be seen from the statement of objections filed in writ petition No.5368-5371 of 2019. The averments made in sub-clause (f) (iv) of paragraph 3.19 are very relevant where the 16th respondent has chosen to make allegations of very serious nature against a very senior and respected designated Senior Advocate of this Court. Before we concluded the submissions, we had given an opportunity to the 16th respondent to withdraw the said allegations. However, for the reasons best known to 16th respondent, the said respondent has not chosen to withdraw the said allegations. Under such circumstances, the only inference which can be drawn is that the 16th respondent is maintaining the said allegations. Therefore, we are constrained to quote what are those allegations. Before we quote the relevant portion, we are reminded of what Abraham Lincoln reportedly said. He said *"In law it is good policy to never plead what you need not, lest you oblige yourself to prove what you cannot."* While we are quoting the relevant portion, we have

deliberately masked the name of the Senior Advocate. The relevant portion of the statement of objections reads thus:

> *"3.19 (f) (iv): "----- It appears that the 4th Petitioner's Senior/father, Mr. xxxx also aided the slander propagated by the 4th Petitioner, and went on to insist that the present Respondent did more than what was required granted 'sexual favours' to ensure her designation as a Senior Advocate. Mr. xxxx also made calls to several senior Counsel and expressed his dissatisfaction over not being given the respect that he deserves wherein his son should have automatically been designated as a mark of respect for him".*

In clause (f) (v) of paragraph 3.19, it is stated thus:

> *(v) Perusal of the aforementioned facts reveals that the sole grouse of the Petitioners against the present Respondent is her gender. The compilation of posts and allegations made against the present Respondent will reveal that all such content is sexual, sexist, sadistic and perverted in nature".*

(underlines supplied)

119. Apart from the status of the Senior Advocate who was incidentally the father of one of the petitioners as a very respected Senior Advocate of this Court, the allegation made against him is that he aided the slander propagated by the 4th petitioner and went on to insist that the 16th respondent "did more than what was required granted sexual favours to ensure

her designation". Further allegation is that the Senior Counsel called several other Senior Advocates and expressed the view that his son should have been automatically designated. There is a very serious allegation made by the 16th respondent that the learned Senior Counsel made very serious allegations against the 16th respondent which affect her character. However, there is absolutely no attempt made to substantiate the said allegations or there is no attempt made to withdraw the said allegations, notwithstanding an opportunity is given to the 16th respondent. Even assuming that the 16th respondent has reason to get disturbed due to allegations made by the petitioners or the 4th petitioner, the 16th respondent as a designated Senior Advocate should have shown restraint and avoided to make unsubstantiated allegations against a senior member of the Bar. Not only that, the printouts of certain messages exchanged amongst the members of the Bar on WhatsApp platform have been annexed. We are conscious of the fact that the said respondent is not the author of the said messages. But, the same were irrelevant to decide the issue of alleged illegality of the decision making process and therefore, annexing such messages ought to have been avoided. The said

WhatsApp messages contain very unfortunate allegations which are wholly irrelevant to the controversy on merits in the petition. For example, one message states that propriety of the two transferred judges sitting as a members of the committee for the interview may be questioned. One message says that “even the High Court has made it ugly”. One message records that "Karnataka judiciary has been ravaged by outside judges". There is one more allegation that one of the candidates hosted a lavish party to one outgoing judge (who was in the Committee) 4 days prior to the Full Court meeting. We are not quoting anything further from the printouts by reason of propriety. We are conscious of the facts that these allegations are not made by the 16th respondent but allegedly by some other members of the Bar. The said respondent may have been personally hurt by what stated about the process and hearsay on media platforms. But, annexing printouts of the same ought to have been avoided. The contents of the messages had no relevance to the controversy or to the merits of the decision making process. What is seriously questionable is the propriety of a designated Senior Advocate of the Bar making unsubstantiated allegations against a very senior member of the Bar which will not only

adversely affect his reputation but also adversely affect the image of this institution. The allegations are made by her for defending a challenge to her designation. As such, we are of the view that act of making such unsubstantiated allegations of serious nature against a reputed Senior Advocate of the Bar and the failure to either withdraw the allegations or substantiate them, may, *prima facie*, require consideration of the case of the said respondent under Rule 9 of the Senior Advocates Rules. *Prima facie*, we are of the view that the Full Court may have to consider the case of the 16th respondent as per the guidelines of the Apex Court in paragraph 73.11 of the directions read with Rule-9 of the Senior Advocates Rules. We are aware that it is prerogative of the Full Court to take action of review/recall and that is why we are recording only *prima facie* findings. We make it clear that whatever we have observed above be placed before the Full Court. But it is obvious that the Full Court will not be bound by the same and any such exercise will be done strictly in accordance with the guidelines of the Apex Court and the provisions of the Senior Advocates Rules.

IX. A SUMMARY OF SOME OF THE CONCLUSIONS:

120. Now we summarise only some of the conclusions:

(a) The directions contained in paragraphs 73 to 73.11 of the Apex Court in the case of ***Indira Jaising*** (supra) are the directions issued in exercise of its power under Article 142 of the Constitution of India and, therefore, the same are binding on all the High Courts;

(b) Sub-section (2) or any other sub-sections of Section 16 of the Advocates Act, 1961 do not confer any Rule making power either on the Central Government or on Apex Court or High Courts for regulating the designation of Senior Advocates. But, Section 34(1) of the Advocates Act confers a rule making power on the High Courts to frame the Rules concerning the designation;

(c) If any of the Rules forming a part of the High Court of Karnataka (Designation of Senior Advocates) Rules, 2018, framed by the High Court of Karnataka

is either inconsistent or contrary to the directions issued by the Apex Court in the case of ***Indira Jaising*** (supra), either the same will have to be read down or will have to be ignored and the process of designation of the Advocates as Senior Advocates must be commenced and carried out strictly in terms of the directions of the Apex Court;

(c-(i)) Rule-11 which gives finality to the views of the Chief Justice is contrary to the decision of the Apex Court. Hence, it cannot be implemented;

(d) The power to designate an Advocate as a Senior Advocate vests only in a Full Court of a High Court;

(e) The Chief Justice of a High Court, the two senior most judges and the Advocate General of the State are *ex-officio* members of the Permanent Committee and they cannot be replaced by anyone else, so long as the directions contained in ***Indira Jaising*** (supra) are not modified or amended;

(f) The function of the Permanent Committee Constituted by the High Court is firstly, to direct its Permanent Secretariat to collect certain information/data from certain sources about the Advocates who have applied for designation, if the Permanent Committee finds it necessary. The second function of the Permanent Committee is to examine each case in the light of the data compiled by the Secretariat of the Permanent Committee, hold interactions/interviews with each candidates and to make overall assessment of all candidates by assigning points/marks out of 100, as provided in the table, forming a part of paragraph 73.7 of the directions issued by the Apex Court. The Apex Court has not conferred any specific power on the Permanent Committee to make any recommendation of any particular candidate. At highest, the points assigned by the Permanent Committee to the candidates will constitute its recommendation;

(g) The overall assessment made by the Permanent Committee in respect of every candidate shall be placed before the Full Court for decision, as the decision making authority vests in the Full Court;

(h) The Full Court is not bound by the overall assessment or points/marks assigned by the Permanent Committee. The Full Court may agree or may not agree or may partially agree with the overall assessment made by the Permanent Committee. The members of the Full Court can always ignore the point based overall assessment of the Permanent Committee and call for the records of each candidate and take appropriate decision;

(i) As per the directions of the Apex Court, the Permanent Committee is required to make a broad or overall assessment by assigning points out of 100. The exercise undertaken by the Permanent Committee cannot be treated as a conduct of an examination of the candidates or conduct of a selection process. The interview/interaction

conducted by the Permanent Committee cannot be treated as a vivo voce conducted for the purposes of a selection process. The interview/interaction is not vitiated only because it is done for few minutes or only because few questions were asked during interaction;

(j) A writ Court, while exercising its power of judicial review under Article 226 of the Constitution, cannot go into the correctness or merits of the marks or points assigned to the candidates unless the process is vitiated by gross illegality or proved bias or *mala fides* or the assessment is so arbitrary or capricious that no reasonable person can make such an assessment. The writ Court cannot sit over in appeal on the point based overall assessment made by the Permanent Committee;

(k) The decision of the Full Court on the question of granting designation or declining to grant designation is not taken in exercise of quasi judicial or judicial power. The Full Court is not supposed to

conduct an examination of the candidates or to conduct a selection process. The decision of the Full Court is based on the formation of an opinion in accordance with sub-section (2) of Section-16 of the Advocates Act, 1961 that by virtue of his ability, standing at the Bar or special knowledge or experience in law, a particular Advocate deserves designation. The formation of opinion must be based on materials. The Full Court is not bound to record reasons for grant of designation or for declining to grant designation;

(l) When a writ Court is called upon to exercise its power of judicial review under Article-226 of the Constitution of India against the decision of the Full Court, it cannot go into the merits of the decision and it can examine only the decision making process . Unless the decision is vitiated by gross illegality apparent on the face of the record or it is a case of established *mala fides* or established bias, a writ court cannot interfere. A writ Court can interfere

when the decision is so capricious or arbitrary that no reasonable person can arrive at such a decision. The test is not what the Court considers reasonable or unreasonable. While exercising its power under Article-226, the High Court has to keep in mind that the decision is taken by the constitutional functionaries, namely, the Judges of the High Court. A writ Court cannot go into the adequacy of material before the Full Court;

(m) As directed by the Apex Court in paragraph 73.9, the general rule is that voting by secret ballot will not be normally be resorted to by the Full Court. The voting by secret ballot will be resorted to by the Full Court only in exceptional circumstances and when it is un-avoidable. Merely because few members of the Full Court who are in minuscule minority seek secret ballot, recourse to secret ballot cannot be taken, as it will defeat the directions of the Supreme Court contained in paragraph 73.9 of the directions;

(n) The Full Court is not bound to record reasons for not accepting the dissent expressed by few Members;

(o) Whenever a Judge of a High Court is transferred by an order of the Hon'ble President of India issued under clause (1) of Article-222 of the Constitution of India to another High Court and he is directed to assume charge as a Judge of another High Court on or before particular date, he does not cease to be a Judge of the original High Court to which he was appointed till he subscribes to the oath or affirmation as a Judge of the High Court to which he has been transferred. In the present case, as Hon'ble Shri. Justice Raghvendra S. Chauhan had not subscribed to the oath or affirmation as a Judge of High Court at Hyderabad till 15th November, 2018, he continued to be the second senior most Judge of High Court of Karnataka and he had a right to act as a member of the Permanent Committee and a member of the Full Court. There is no illegality associated with his

participation in the process of designation of Senior Advocates;

(p) We reject the contention that in the facts of the case, the Full Court had fixed the benchmark of 50% marks;

(q) We hold that the point based overall assessment made by the Permanent Committee in respect of all the candidates was placed before the Full Court and the cases of all candidates were considered by the Full Court;

(r) We hold that if the Full Court decides not to designate certain Advocates as Senior Advocates, the bar of two years as provided in the directions contained in paragraph-73.10 of the Apex Court in the case of ***Indira Jaising*** (supra) will apply and their cases cannot be reviewed/considered for a period of two years. However, we are not setting aside that part of the impugned resolution of the Full Court by which an exemption was granted to 15

members of the Bar from applicability of two years bar, as the said 15 Advocates are not made parties to the proceedings. However, if their cases are considered prior to 15th November, 2020, the Full Court is bound to consider the directions contained in paragraph 73.10;

(s) We *prima facie* hold that the action of the sixteenth respondent in W.P.No. 5368 of 2019 (Smt Lakshmy Iyengar) of making unsubstantiated serious allegations against a Senior Advocate of this High Court and her action in annexing irrelevant and objectionable material to the statement of objections filed in W.P. No. 5368 of 2019 may not be consistent with her standing as designated Senior Advocate. More so when after giving an opportunity to withdraw the allegations against the Senior Advocate, the same were not withdrawn by her. Therefore, we are of the view that her case needs to be considered by the Full Court for review or recall in accordance with the directions of the Apex Court

contained in paragraph 73.11 in the case of ***Indira Jaising*** (supra). However, we make it clear that we are expressing only a *prima facie* view, as it is prerogative of the Full Court to review or recall the designation conferred upon her as Senior Advocate. Our *prima facie* findings will not bind the Full Court;

(t) As regards 12th respondent (Sri Arun Kumar K), against whom the Sole Arbitrator has recorded adverse finding, we hold that as the challenge to arbitral award is pending adjudication, at this stage, no directions can be issued for consideration of his case for review or recall of designation conferred on him;

(u) We hold that no case is made out to interfere with the decision making process adopted by the Permanent Committee and by the Full Court in its meeting held on 15th November, 2018;

(v) For the reasons recorded earlier, we are unable to issue directions to the Union of India to frame the Rules for designation of Senior Advocates;

(w) We reject the contention that the directions issued by the Apex Court in the case of ***Indira Jaising*** (supra) are *per incuriam.* We hold that the directions of the Apex Court being issued in exercise of power under Article 142 of the Constitution of India, no High Court can tinkle with any of the directions issued thereunder.

121. Before we part with the Judgment, we must acknowledge that most of the members of the Bar showed restraint while making submissions and co-operated with the Court. There were few exceptions, but as it is said, the exception proves the rule.

Hence, we pass the following:

ORDER

i) None of the prayers made in the writ petitions can be granted and hence, the writ petitions are rejected;

ii) We direct that in the light of the *prima facie* findings which we have recorded in this Judgment, the case of the 16th respondent (Smt Lakshmy Iyengar) shall be placed before the Full Court for considering the exercise of its power of review or recall as per the directions contained in paragraph 73.11 in the decision of the Apex Court in the case of ***Indira Jaising*** read with Rule-9 of the High Court of Karnataka (Designation of Senior Advocates) Rules, 2018. However, as the power to recall or review is the exclusive domain of the Full Court, we have not recorded any final opinion about exercise of such power;

iii) As all the contesting parties to these writ petitions are the members of the Bar, there shall be no order as to the costs.

Sd/-
CHIEF JUSTICE

Sd/-
JUDGE

VR