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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ LPA 522/2024 & C.M.Nos.36055-36057/2024

CA RAKESH KUMAR GUPTA Appellant
Through Appellant in person.

versus

SUPREME COURT OF INDIA THROUGH
SECRETARY GENERAL Respondent
Through None

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Date of Decision: 02nd July, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

MANMOHAN, ACJ : (ORAL)

1. Present letters patent appeal has been filed challenging the judgment dated 27th May, 2024 passed by the learned Single Judge in W.P.(C) 5017/2024, whereby the writ petition filed by the appellant, was dismissed with costs on the ground that the appellant had no *locus standi* to maintain the writ petition.

2. The appellant who appears in person states that the appellant has locus to file the writ petition as he is a resident of Delhi and his cases have been pending in Courts due to lack of appointment of judges. He states that lack of judges in High Courts also results in lack of supervision of District Courts, which affects the functioning of the District Courts.



3. It is pertinent to mention that before the learned Single Judge, the grievance of the appellant was that his case before the District Court, Rohini has not been decided till date.

4. He further states that the rejection by the Supreme Court of the recommendations made by the High Court's regarding elevation of Judges to the High Court was about 35.29% in 2023, whereas in the year 2021, the rejection rate was only 4.38%. He states that the Supreme Court Collegium should provide reasons to the High Court Collegium for rejecting its recommendations.

5. He also contends that the learned Single Judge has erroneously considered eligibility criteria for appointment of judges under Article 217 of the Constitution as norms for appointment, which are quantifiable and comparable.

6. Having perused the impugned judgment, this Court finds that the learned Single Judge has correctly noted that vacancies in High Court have no bearing on the pendency of cases in the District Courts. In fact, by the end of this year, the actual strength of the District judiciary is virtually going to be at par with its sanctioned strength. Consequently, the learned Single Judge has rightly held that the appellant has no locus to file the writ petition.

7. The law with respect to appointment of Judges to the Supreme Court and the High Courts is well settled. The Supreme Court has repeatedly drawn a distinction between eligibility and suitability of a person to be appointed as a Judge of the High Court. Eligibility is an objective factor which is determined by applying the parameters or qualifications specified in Article 217(2), whereas, fitness and suitability of a person is evaluated in the consultative process.



8. In *Supreme Court Advocates-on-Record Association and Others v. Union of India* (1993) 4 SCC 41, the Supreme Court has held that the scope of judicial review of appointment of judges is limited insofar as the primacy of judiciary in the process introduces the judicial element in the process, and is itself a sufficient justification for the absence of the need for further judicial review of these decisions, which is ordinarily needed as a check against possible executive excess or arbitrariness. The Supreme Court further held that the element of plurality of judges in formation of the opinion of the Chief Justice of India, effective consultation in writing and prevailing norms to regulate the area of discretion are sufficient checks against arbitrariness.
9. The appellant's contention regarding "rejection" by the Supreme Court is misconceived as the appellant has failed to understand that appointment of a Judge to the High Court or Supreme Court is an integrated, consultative and non-adversarial process, which cannot be challenged in a court of law except on the ground of want of consultation with the named constitutional functionaries or lack of any condition of eligibility in the case of an appointment, or of a transfer being made without the recommendation of the Chief Justice of India.
10. The learned Single Judge has therefore correctly noted that this Court cannot sit in appeal over the subjective satisfaction of the Supreme Court collegium.
11. This Court is of the view that the directions sought by the appellant are not only beyond but also contrary to the law laid down by the Supreme Court in *Supreme Court Advocates-on-Record Association* (supra) and *In*



Re: Appointment & Transfer of Judges (1998) 7 SCC 739.

12. Further, publication of reasons for rejection will be detrimental to the interests and standing of people whose names have been recommended by the High Courts, as the collegium deliberates and decides on the basis of information which is private to the individual being considered. Such information, if made public, will have the effect of stifling the appointment process.

13. If the petitioner believes that his matters have been delayed, it is open to the petitioner to file an application for early hearing in his matters on the judicial side.

14. Accordingly, the present appeal along with the applications is dismissed.

ACTING CHIEF JUSTICE

TUSHAR RAO GEDELA, J

JULY 02, 2024
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