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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 4229/2016 & CM APPLs. 17890-17891/2016

R.P. LUTHRA

Through

..... Petitioner

Petitioner in person.

versus

UNION OF INDIA & ORS

Through

..... Respondents

Mr. Sanjay Jain, ASG with

Mr. Jasmeet Singh, CGSC,

Mr. Srivats Kaushal, Mr. Vidur

Mohan, Mr. Sumit Mishra and

Ms. Astha Sharma, Advocates for
UOI.**CORAM:****HON'BLE MR. JUSTICE MANMOHAN****ORDER**

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13.05.2016

At the outset, name of respondent no. 3 is deleted from the array of parties.

Present writ petition has been filed challenging not only the recommendation of four names by the Supreme Court Collegium but also for a declaration that the judgments passed by the Supreme Court from time to time with regard to mechanism of appointment of judges are unconstitutional.

Petitioner had been heard for more than half an hour on 11th May, 2016 after which he had sought time to peruse the Division Bench judgment in *D.K. Sharma Vs. Union of India & Ors., W.P.(C) 2231/2011* decided on 8th April, 2011.

Today also the petitioner has been heard for more than twenty minutes. He, however, insists to argue for a longer time. Since it is a miscellaneous hearing, this Court is of the view that the petitioner has no right to argue as if it is a regular hearing.

In essence, petitioner, who appears in person, submits that the recommendation of four names by the Supreme Court Collegium without finalizing the Memorandum of Procedure by the Supreme Court and the Government of India is illegal. He further submits that the judgments of the Supreme Court in ***Judges-1, Judges-2, Judges-3*** and ***Judges-5***, namely, ***S.P. Gupta v. Union of India, AIR 1982 SC 149; Supreme Court Advocates-on-Record v. Union of India, (1993) 4 SCC 441; In re Special Reference 1 of 1998, AIR 1999 SC 1*** and ***The Supreme Court Advocates-on-Record Association and Another v. Union of India & Ors., Writ Petition (Civil) No. 13/2015*** decided on ***16th October, 2015*** respectively are *per incuriam*.

In the alternate, he contends that the candidates recommended are not suitable.

The field of appointment of judges is fully covered by the judgment of the Supreme Court. The argument that the Supreme Court judgments are *per incuriam* is untenable in law. The Supreme Court in ***South Central Railway Employees Cooperative Credit Society Employees Union vs. B. Yashodabai and Others, (2015) 2 SCC 727*** has held as under:-

“14. We are of the view that it was not open to the High Court to hold that the judgment delivered by this Court in South Central Railway Employees Coop. Credit Society Employees' Union v. Registrar of Coop. Societies [South Central Railway Employees Coop. Credit Society Employees' Union v. Registrar of Coop. Societies was per incuriam.

15. If the view taken by the High Court is accepted, in our opinion, there would be total chaos in this country because in that case there would be no finality to any order passed by this Court. When a higher court has rendered a particular decision, the said decision must be followed by a subordinate or lower court unless it is distinguished or overruled or set aside. The High Court had considered several provisions which, in its opinion, had not been considered or argued before this Court when CA No. 4343 of 1988 was decided [South Central Railway Employees Coop. Credit Society Employees' Union v. Registrar of Coop. Societies. If the litigants or lawyers are permitted to argue that something what was correct, but was not argued earlier before the higher court and on that ground if the courts below are permitted to take a different view in a matter, possibly the entire law in relation to the precedents and ratio decidendi will have to be rewritten and, in our opinion, that cannot be done. Moreover, by not following the law laid down by this Court, the High Court or the subordinate courts would also be violating the provisions of Article 141 of the Constitution of India.

16. We do not want to go into the arguments advanced by the learned counsel appearing for the respondents before the High Court for the simple reason that it was not open to them to advance any argument which would run contrary to the judgment delivered by this Court in South Central Railway Employees Coop. Credit Society Employees' Union v. Registrar of Coop. Societies [South Central Railway Employees Coop. Credit Society Employees' Union v. Registrar of Coop. Societies. In our opinion, the High Court did something which would be like setting aside a decree in the execution proceedings.]

(emphasis supplied)

Consequently, this Court is of the opinion that a High Court cannot declare Supreme Court's judgment as *per incuriam* .

Further, the Constitution Bench of the Supreme Court vide order dated 19th November, 2015 while reserving the order had stated that the process of appointment of judges by the Collegium System need not remain on hold. Consequently, the argument that no recommendation could have been made without finalizing of memorandum of procedure is not correct.

A Division Bench of this Court in *D.K. Sharma* (supra) has also held that the question of suitability or merits of a candidate cannot be made the subject matter of judicial review in a writ proceeding.

Consequently, present writ petition and applications being bereft of merits are dismissed.

MANMOHAN, J

MAY 13, 2016

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