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

% **DECIDED ON: 01.08.2016**

+ **LPA 410/2016, CM APPL.26052-26053/2016**

MATHEWS J. NEDUMPARA Appellants

Through: Appellant in person.

Mr. R.P. Luthra, Advocate along with
Mr. A.C. Philip and Ms. Anjana Sinha,
Advocates.

Versus

THE SUPREME COURT OF INDIA & ORS. Respondents

Through: Mr. Sanjay Jain, ASG with Mr. Jasmeet
Singh, CGSC, Ms. Rhea Verma and Mr. Srivats
Kaushal, Advocates for UOI.

Ms. Priyam Mehta, Advocate for Resp-4.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

S.RAVINDRA BHAT, J.(ORAL)

1. The appellant had approached this court, claiming several reliefs which essentially entail a declaration that the judgment of the Supreme Court in *Supreme Court Advocates-on-Record Association and another v. Union of India & Ors.* (2016) 5 SCC 1 is not based on sound reasoning and that the collegium of senior most judges who are to recommend appointments to High Court and the Supreme Court, cannot do so. One of the reliefs claimed was:

“(c) declare that Hon’ble Court, Hon’ble Justice Dhananjaya Y. Chandrachud, Hon’ble Justice Ashok Bhushan , Hon’ble Justice Ajay

M. Khanwilkar and Shri L. Nageswara Rao, Senior Advocate, are not liable to be appointed as Judges of the Supreme Court of India since they are selected and recommended for such appointment by the collegium system of appointment of Judges, which the Five-Judge Constitution Bench in its judgment in The Supreme Court Advocates-on-Record Association and another v. Union of India & Ors. [Writ Petition (Civil) No. 13 of 2015 and others decided on 16th October, 2015], has held to be defective and a failed one and which requires improvement by recourse to nothing but "glasnost and "perestroika", and a consequential injunction restraining and prohibiting Respondent No.1 from appointing them as Judges of the Supreme Court of India... ”

2. At the stage of admission, a learned single judge had, after hearing the petitioner- a practicing advocate, dismissed the petition. It was held in the impugned judgment that the law declared by the five judge Bench in *Supreme Court Advocates on Record (supra)* is binding on all courts under Article 141 of the Constitution of India. The single judge relied on *South Central Railway Employees Cooperative Credit Society Employees Union vs. B. Yashodaba & Others*, (2015) 2SCC 727, which held that a High Court cannot question the reasoning and conclusions of a Supreme Court.

3. The petitioner reiterates the grounds urged in support of the writ petition and additionally states that the declaration of law in *Supreme Court Advocates on Record (supra)* is *per incurium* and therefore, not binding on this court; he also submits that the court did not have the benefit of views of all concerned, particularly the younger advocates.

4. This court is unable to agree with the submissions of the appellant. All courts: High Courts, being no exception, are tethered to precedent as

well as the law declared by the Supreme Court by virtue of Article 141 of the Constitution. The doctrine of precedent ensures consistency and lends stability to the administration of law. If every court is left free to pursue its views regardless of previous judgments of higher courts, or Benches of greater composition, within the same court, in a hierarchal system, the consequence would be chaos and uncertainty about the law. It is useful to recollect the caution administered in *Broom v. Cassell & Co.*, [1972] 1 AER 801 that:

"it will never be necessary to say so again, that in the hierarchical system of courts which exists in this country, it is necessary for each lower tier, including the Court of Appeal, to accept loyally the decisions of the higher tiers".

In *Ambika Prasad Misra v. State of U.P.* AIR 1980 SC 1762 the Supreme Court held that though a decision might be based on faulty reasoning or might be unsatisfactorily argued, if it is of a higher court and consequently binding, has to be necessarily followed. The following observations in Salmond's 'Jurisprudence', page 215 (11th edition) was referred to:

"A decision does not lose its authority merely because it was badly argued, inadequately considered and fallaciously reasoned."

5. *Supreme Court Advocates on Record (supra)* is law declared not only with respect to interpretation of the relevant provisions of the Constitution; it is also the law declared that the collegium system prevailing for selection and appointment of judges, is part of the basic structure or essential features of the Constitution of India. Courts are bound to unquestionably accept this as the law of the land. Having regard to this plain position in law, we find

no reason to depart from the view that impelled the learned single judge to dismiss the writ petition. The appeal consequently fails and is dismissed, but without any order as to costs.

**S. RAVINDRA BHAT
(JUDGE)**

**DEEPA SHARMA
(JUDGE)**

AUGUST 01, 2016

