

THE JUDICIARY

Controversial choice

V. VENKATESAN

The Supreme Court collegium, for the first time, is under pressure to withdraw a name it recommended for appointment as a judge of the court.

V. SREENIVASA MURTHY

Justice P.D.Dinakaran, Chief Justice of the Karnataka High Court.

THE Supreme Court's collegium comprising the Chief Justice of India (CJI) and four senior judges, which recommends appointees to the Supreme Court, exercises a crucial responsibility. It has a decisive say in the appointment process, which includes a mandatory consultation with the government. The CJI's view, formed and fortified by the supporting views, in writing, of just two other members of the collegium, has primacy. Although the government can return a recommendation for reconsideration by the CJI and the collegium for specified reasons, they can reiterate their recommendation, which will be binding on the government.

This legal position means that once the CJI and the collegium make a recommendation practically nothing can be done to change it. Once a judge is appointed, it is virtually impossible to remove him or her from office because the process of impeachment of a judge by Parliament is long and cumbersome. The judgment of the Supreme Court's nine-judge Bench in the Supreme Court Advocates-on-record case in 1993, (known as the Second Judges Case), which heralded the era of collegium with primacy to the CJI, said so clearly while laying down the grounds on which the government could reject the CJI's recommendation:

"If the non-appointment in a rare case... [of a recommended appointee] turns out to be a mistake, that mistake in the ultimate public interest, is less harmful than a wrong appointment."

However, by limiting severely the grounds for rejecting a CJI's recommendation with regard to appointments, the Supreme Court's judgments in the Second and Third (1998) Judges Cases, according to observers, paved the way for several wrong appointments. With the collegium's deliberations shrouded in secrecy, it was inconceivable that any wrong recommendation of the collegium would come to public notice. There is a gap of six to 10 weeks (which can stretch up to a maximum of 16 weeks, if there is disagreement among members of the collegium) between the government's receipt of a proposal from the CJI and the actual appointment of a judge. But this period is almost always rushed through, with little public transparency over the written opinions of the members of the collegium. The 1993 judgment makes these opinions non-justiciable but not non-disclosable to the public.

A report that appeared in *The Hindu* on August 27 about the collegium's recommendation to appoint five new judges lifted the veil of secrecy surrounding the minutes of the collegium. The names recommended were Ananga Kumar Patnaik, Chief Justice of the Madhya Pradesh High Court; Tirath Singh Thakur, Chief Justice of the Punjab and Haryana High Court; Surinder Singh Nijjar, Chief Justice of the Calcutta

High Court; P.D. Dinakaran, Chief Justice of the Karnataka High Court; and K.S. Radhakrishnan, Chief Justice of the Gujarat High Court.

Responsible legal circles in Chennai who read The Hindu's report were perturbed to learn the background of one of the appointees, Justice Dinakaran. The Forum for Judicial Accountability (FJA), of which R. Vaigai, an advocate in Chennai, is the convener, received information about certain allegations against him. The allegations related to land-grabbing, acquisition of assets disproportionate to known sources of income and abuse of office.

On September 9, the FJA made its first written complaint, in detail, to the collegium about these allegations. Senior advocates in the Supreme Court, Fali S. Nariman and Shanti Bhushan, handed over the complaint to the CJI and other members of the collegium. Asked why the FJA did not disclose these allegations when Justice Dinakaran was elevated as the Chief Justice of the Karnataka High Court, Vaigai told Frontline that the FJA did not have the information earlier. "Only now, could we get the information backed with documentation," she said.

On September 17, the FJA forwarded to the collegium additional materials regarding Justice Dinakaran's assets and his "rather unusual judicial orders". Shanti Bhushan and fellow senior Supreme Court advocates Anil Divan and Kamini Jaiswal handed over to Union Law Minister M. Veerappa Moily a copy of the second missive and requested the government not to proceed with Justice Dinakaran's appointment. Reports in the media on the allegations forced Justice Dinakaran to opt out of an official visit to Australia along with the CJI and other judges of the Supreme Court.

The FJA, on October 1, sent to the collegium more information relating to the amassing of property and exercise of judicial powers to decide cases in his own cause by Justice Dinakaran. It also provided further documentary proof of the acquisitions detailed in the FJA's earlier representations.

LAND ISSUE

The most serious of the allegations, on which substantial evidence is available, pertained to land-grabbing at Kaverirajapuram village, Tiruttani taluk in Tiruvallur district in Tamil Nadu. Justice Dinakaran was a judge of the Madras High Court between December 19, 1996, and August 6, 2008, before his elevation as the Chief Justice of the Karnataka High Court.

According to the 2001 Census, Kaverirajapuram is a village with 491 households and a population of 1,878. The number of Scheduled Castes is 1,083, and the literacy rate is 57.15 per cent. Nearly 500 people of the village work as marginal agricultural labourers and about 127 work as agricultural labourers. The total extent of the village, according to the FJA, is about 1,700 acres (688 hectares).

The FJA's investigation revealed that the encroachment of government land and public property meant for the villagers deprived them of their resources and livelihood. The encroached area includes the government Anadhinam land, meant to be assigned only to landless poor for small holdings and personal cultivation, and poromboke land, which is meant for all residents and cannot be occupied by any individual. Under a recent scheme of the State government, they can be distributed only to the landless poor.

The investigation found that the encroachment also extended to water bodies such as lakes, canals and streams, to common village pathways and to an ancient mud fortress abutting his patta land. Access to the water source for the village was also restricted by

the extensive use of water for the judge's farm, the investigation found. The erection of a fence around the encroached property deprived the local residents of access to common-property resources of the village, on which many of them depended for their livelihood. According to the FJA, Justice Dinakaran is in possession of approximately 440 acres in the village alone, almost one-fourth of the village. Of these, more than 300 acres are owned by him, his wife and two daughters. This is clearly in violation of the ceiling limit under the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961, under which a family of five persons can possess not more than 15 standard acres. Enclosed within the fenced area (440 acres) is nearly 150 acres of government and village common land meant for community use. The FJA's complaint said that nearly 600 families of Dalits and landless poor in the village had sought distribution of poramboke and Anadhinam lands to them as per the State government's G.O. (Ms) No.241 dated September 12, 2006. The applicants have not yet been assigned these lands. The FJA claimed that immediately after this the common and government lands were fenced in. The FJA estimated the market value of the area to be Rs.20-25 lakh an acre. The FJA's September 9 complaint apprehended that the fence around the encroached areas, witnessed by its members, might be removed once its complaint became public, and brought to the collegium's notice that the common village lands near Justice Dinakaran's property were out of bounds for the people. The complaint also alleged that the local police were used to prevent access to the area. As if to vindicate the FJA's concern, on October 10 some persons attempted to remove a portion of the barbed-wire fencing around the poramboke land adjacent to the patta land. It was foiled by the Tiruvallur district administration.

V. SUDERSHAN

Senior lawyers Anil Divan (left), Shanti Bhushan and Kamini Jaiswal, after a meeting with Union Law Minister M. Veerappa Moily in New Delhi on September 18. They requested the government not to proceed with Justice Dinakaran's appointment and handed over to the Minister a copy of the second letter the Forum for Judicial Accountability sent to the Supreme Court collegium on the issue.

The bid to remove the fencing took place in the context of reports that Tiruvallur District Collector V. Palanikumar had sent to Chief Justice of India K.G. Balakrishnan a report on the landholdings of Justice Dinakaran, as requested by the CJI.

Tiruttani Tahsildar R. Vijayaraghavulu along with the Revenue Divisional Officer in charge, Tiruttani, B. Balasubramaniam, Village Administrative Officer R. Govindasamy and other officials rushed to the spot on receiving information about the attempt to remove the fencing. The officials were accompanied by the police but were stopped by the manager of the land, Rajkumar, who handed over to Vijayaraghavulu a mobile phone saying that Justice Dinakaran was on the line. Vijayaraghavulu alleged that the person at the other end threatened him with dire consequences. He also alleged that the person told him that officials could not enter the land without his knowledge and that he would take criminal action against them for trespass. The Tahsildar said he filed a complaint with the Collector.

In the meantime, the Tamil Nadu Vivasayigal Sangam, affiliated to the Communist Party of India (Marxist) and to the All India Kisan Sabha, submitted a memorandum to the

Collector seeking action against those who tried to remove the fencing. The district administration is also reported to have sent a report to the State government. According to K. Balakrishnan, general secretary, Tamil Nadu Vivasayigal Sangam, as per the 'A' register of the village, the total extent of land in the village is 3,243.36 acres, of which poromboke land alone constitutes 671.66 acres. The implication seemed to be that the extent of encroachment was much more than what it was claimed to be. Balakrishnan was equally critical of the State government for its lack of commitment to implement the Tamil Nadu Land Reforms Act and to enforce the land-ceiling limits by prosecuting those who amassed land with impunity. The Sangam recently organised a day's fast by its activists to protest against the State government's inaction against land-grabbing.

Even the district administration has admitted that the current land records of the village are not accessible, even though records for other villages are available. At the Tiruttani taluk office, the touch-screen facility to access land records of the village is inoperative. Only a thorough investigation can establish who tampered with the land records. Fortunately, the original land records, that is, before they were updated, are available. These records indicate the extent of government and private land in the village and were the basis for the FJA's allegations. Vaigai told Frontline that the FJA interacted with long-time residents of the village. She said that according to them lands where they used to take their cattle and which had lakes had been fenced in.

Collector V. Palanikumar's report to the CJI, sent through the State government, has not yet been made public. The CJI has reportedly sought Justice Dinakaran's response to the report, consistent with the principles of natural justice, before proceeding further. According to a report in The Hindu, the Collector is said to have reported that the extent of encroachment was 197 acres of government and public land and that four types of violations of the law had taken place.

NO CASTE ANGLE

The National Commission for the Scheduled Castes decried the campaign in the media against Justice Dinakaran and the CJI, for having recommended him, because both were Dalits. Some groups in Tamil Nadu insinuated that the campaign against Justice Dinakaran smacked of casteist overtones.

But the FJA made it clear that it was against Justice Dinakaran's appointment not because he was a Dalit but because the allegations were serious. The FJA cautioned the collegium that his addition to the Supreme Court would only diminish the image of the great institution. It, therefore, requested the collegium to withdraw the recommendation to appoint him and to initiate an inquiry into his conduct.

Prashant Bhushan of the Committee on Judicial Accountability (COJA), New Delhi, pointed out that the collegium did not consult Justices Markandey Katju and A.K. Ganguly, who were Chief Justices of the Madras High Court when Justice Dinakaran was a judge there. Such consultation was a requirement under the Supreme Court's judgment in the Second Judges Case.

The Supreme Court had pointed out in that case that the CJI was expected to ascertain the views of the senior-most judge of the Supreme Court whose opinion was likely to be significant in adjudging the suitability of the candidate by reason of the fact that he had come from the same High Court, or otherwise. In other words, the senior-most judge of

the Supreme Court whose view is sought by the CJI on behalf of the collegium must be from the same High Court where the person proposed to be recommended served. It is understood that the collegium defended its decision by pointing out that the CJI sought the views of Justice R.V. Raveendran, the senior-most judge of the Supreme Court who served in the Karnataka High Court, before recommending Justice Dinakaran. But the spirit of the judgment would have required a much wider consultation with senior judges who might have been familiar with Justice Dinakaran's long tenure in the Madras High Court.

B. JOTHI RAMALINGAM

TIRUVALLUR DISTRICT REVENUE Officer G. Mohanasundaram receives a memorandum from representatives of residents of Kaverirajapuram at the collectorate on October 12. They are seeking allotment of land under the State government's scheme to allot "two acres of farmland to landless farmers".

Meanwhile, Justice Dinakaran continued to preside over his Bench at the Karnataka High Court, ignoring a resolution passed by the Advocates Association of Karnataka on September 17 that he desist from holding court at the High Court until he was cleared of the allegations. However, as the legal fraternity in the State was divided over the issue, the threat of boycott did not fructify. The State Advocate-General urged Justice Dinakaran to preside over the court until the CJI took a decision on the matter.

But options appeared to be running out for both the collegium and the Law Ministry, which has been awaiting an appropriate signal from the collegium. It appeared as though the collegium would ask the Ministry to delink its recommendation on Justice Dinakaran from the other four appointees so that the process of appointing the other four Judges could go ahead. Once delinked, the collegium may formally have to withdraw its recommendation to appoint Justice Dinakaran so that the in-house inquiry against him can be set in motion to decide whether he can continue as the Chief Justice of the Karnataka High Court.

If the collegium recalls its recommendation to elevate Justice Dinakaran, it will be the first time it will be admitting to a lapse in nominating a non-suitable person as a judge. A repetition of such lapses can be avoided if the court takes deliberate steps to make the process more transparent than it is now. •