

COMMITTEE ON JUDICIAL ACCOUNTABILITY

66 Lawyers Chambers

Supreme Court of India, New Delhi

Members:

**Ram Jethmalani Shanti Bhushan Rajendra Sachar
D.S. Tewatia Anil Divan Indira Jaisingh Kamini Jaiswal
Prashant Bhushan Arvind Nigam Convener: Hardev Singh**

3/2/07

To,
Shri Abdul Kalam
President of India
Rashtrapati Bhavan
New Delhi

Subject: Lack of required consultation in recommendation of appointment by transfer of Justice Jagdish Bhalla to the Kerala High Court.

Dear Rashtrapatiji,

We had earlier written to the Chief Justice of India, seeking an independent investigation into the purchase of land (said to worth 7 crores for only 5 lacs) by the wife of Justice Jagdish Bhalla senior judge of the Lucknow bench of the Allahabad High Court from well known members of a land mafia (copy of that letter dated 12/7/06 is enclosed). When no investigation was conducted in the matter, we had thereafter sought the permission of the Chief Justice of India (vide letter dated 1/11/06, copy of which is also enclosed), to lodge an FIR against the judge. This permission was necessary since the Supreme Court has interdicted the registration of FIRs against judges without the prior permission of the CJI.

However, far from investigating the serious charges against Justice Bhalla, and without even granting permission for registration of an FIR, so that the matter could be investigated, we learn that the then Chief Justice recommended the elevation by transfer of Justice Bhalla as Chief Justice of the Kerala High Court. However we have learnt from very reliable sources that while making this recommendation regarding Justice Bhalla, the then Chief Justice did not consult all the other judges in the Supreme Court who are from Allahabad High Court or who had been Chief Justices of the Allahabad High Court. This is clearly contrary to the Judgement of the Supreme Court in the second Judges case as amplified and clarified in Special Reference No. 1 (1998 (7) SCC 739, copy of which is also enclosed) which clearly says that:

“37. It is to our mind imperative, given the gravity involved in transferring High Court judges, that the Chief Justice of India should obtain the views of the Chief Justice of the High Court from which the proposed transfer is to be effected as also the the Chief Justice of the High Court to which the transfer is to be effected. This is in accord with the majority judgement in the Second Judges case which postulates consultation with the Chief Justice of another High Court. The Chief justice of India should also take into account the views of one or more Supreme Court judges who are in a position to provide material which would assist in the process of deciding whether or not a proposed transfer

should take place. These views should be expressed in writing and should be considered by the Chief Justice of India and the four seniormost puisne judges of the Supreme Court. These views and those of the four seniormost puisne judges should be conveyed to the government of India along with the proposal of transfer. Unless the decision to transfer has been taken in the manner aforesaid, it is not decisive and does not bind the government of India. “

Further in the operative directions issued by the court in Para 44, it is stated that:
“5. *The requirement of consultation by the Chief Justice of India with his colleagues who are likely to be conversant with the affairs of the High Court concerned does not refer only to those judges who have that High Court as a parent High Court. It does not exclude Judges who have occupied the office of a judge or Chief Justice of that High Court on transfer”.*

It is therefore clear from the above paragraphs that all the judges of the Supreme Court who were from Allahabad High Court or who had been Chief Justices there, needed to be consulted before the Chief Justice could recommend the elevation by transfer of Justice Bhalla as Chief Justice of Kerala. There are at least 3 judges of the Supreme Court, outside the collegium who fall in this category. We understand that at least two of them have not been consulted in this matter. In these circumstances, for this reason as well, apart from the undesirability to elevate Justice Bhalla without a proper investigation into the charges against him, it is imperative that the recommendation regarding Justice Bhalla must be sent back to the Collegium for completing the consultation.

We are taking the liberty of sending copies of this letter to the Prime Minister and the relevant Judges of the Supreme Court who form the collegium in this matter.

With warm regards,

Yours Sincerely,

SIGNED BY: SHANTI BHUSHAN
RAM JETHMALANI
ANIL B. DIVAN
PRAKASH BHUSHAN
KAMINI JAISWAL
ARVIND NIIGAM
ARDEV SINGH