

FOR JUDICIAL ACCOUNTABILITY

Can retired SC judges' advice be used in courts?

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New Delhi: Opening a new front in the battle for judicial accountability, the Delhi HC has directed the government to take a stand under oath on whether retired Supreme Court judges could give advice to litigants and whether they could also take up arbitration work while they are holding official positions.

A bench comprising acting Chief Justice Madan Lokur and Justice Mukta Gupta asked the Union law ministry on March 10 to file an affidavit on a PIL filed by Delhi-based NGO, Common Cause, alleging that former SC judges were violating the Constitution "in letter and spirit" by tendering legal opinions, which were being produced in various forums of adjudication to influence judgment.

This matter was first taken up last month by the then chief justice of HC, A P Shah, who had just before his retirement asked the government to respond to the PIL. In the subsequent hearing, Justice Lokur came up with the direction for the affidavit as the government had failed to disclose its stand even orally.

Arguing on behalf of Common Cause, advocate Prashant Bhushan said that the lucrative chamber practice among retired SC judges of giving legal opinions was contrary to Article 124(7), which forbids them to "plead or act in any court or before any authority within the territory of India".

In a narrow and self-serving interpretation, former SC judges have construed the expression "plead or act", figuring in Article 124(7), as a bar only on their appearance in courts. The PIL has therefore requested Delhi HC to declare that the act of giving a written advice to be tendered in a court of law also "comes within the mischief of Article 124(7)".

The PIL has also decried the widespread practice among retired judges, both from the SC and the other high courts, to take up arbitration assignments from litigants despite holding constitutional or statutory posts as chairpersons or members of various commissions or tribunals. Though arbitration is encouraged as an alternative dispute resolution (ADR) to expedite high-stake commercial cases, Common Cause pointed out the danger of allowing such private assignments to be given to judges who had already been entrusted with post-retirement tasks of public importance.

Details of some of the payments made to retired Supreme Court judges were obtained by Common Cause from public sector enterprises, which come under the purview of RTI. Former CJI, Justice R C Lahoti, received Rs 3,25,000 from National Thermal Power Corporation Ltd for a legal opinion in 2006-07. He also received Rs 3,25,000 from Rashtriya Ispat Nigam Ltd for a legal opinion during the same period.

In response to an RTI query, the law ministry has stated that there is no written policy in respect of allowing retired SC and HC judges to take up arbitration work while heading a Commission of Inquiry constituted by the Union government and that there are no conditions attached as such to the grant of such permission.

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