



NALSAR University of Law, Hyderabad

Presents

**13th NALSAR Justice B.R. Sawhny Memorial Moot
Court Competition, 2020**

On 06-08 March 2020

Moot Proposition

Knowledge Partners



KRISHNA NEEL VERMA

v.

FEDERAL REPUBLIC OF MAYEECHIN

1. The Federal Republic of Mayeechin came into existence in 1947. Its neighbors, laws and legal systems are the same as India. Mayeechin was grappling, inter-alia, with the problem of black-money. People wanted an honest and responsible government to deal with the problems of unemployment, lack of good-governance and concentration of power and wealth.
2. Mayeechin has a very powerful Supreme Court. Its judges are selected by judges, as the judges read this as part of the Constitutional provisions, in a landmark judgment given by the judges of the Supreme Court. Even its critics believe this was necessary, as the then Government was found to be interfering with judicial functions of the Court and appointing its “favorites” on the bench, and punishing the ones who gave judgments against the Government.
3. As per the law settled by the Supreme Court, the Chief Justice is chosen by seniority. The seniormost among the sitting judges of the Supreme Court as on the date of retirement of incumbent Chief Justice, is nominated by the incumbent Chief Justice to be the next Chief Justice, who is then so appointed under the hand and seal of the President. The Chief Justice of the Supreme Court decides the roster. This “Judges Roster” decides which subject category will go before which bench. This is vital to the functioning of the Supreme Court as the judges are otherwise deemed to be equals, with the Chief Justice being the *Primus inter pares*.
4. A lot of scholars have written about the Supreme Court of Mayeechin. Some of these studies point out that there has been a lack of consistency in the manner of dispensation of justice. Some studies provided insights on a chronological assessment and pointed out trends in areas like Land Ceiling and Tenancy laws, Labour matters, Landlord-Tenant disputes, expansion of jurisdiction for human rights’ cases etc. A scholar pointed out that given the wide variety and diverse background of judges, some variation in their approach towards law is but natural. One of the studies by a learned scholar assessed more than 60,000 order sheets and concluded that cases in which Senior Counsels appeared had a lesser number of dismissals. Another study categorized the Senior Counsels of the Supreme Court under perceived Categories like A, B, C; where the A listers usually charged per appearance fees of more than a million rupees, those in B list charged anywhere between half to 3/4 of a million, and those in C list charged less than half a million but more than a hundred thousand rupees for each appearance.
5. In 2007, a PIL was filed in the Supreme Court asking for a capping of lawyers’ fees and providing a Senior Counsel for all legal-aid matters. One Mr. Krishna Neel Verma, known to be the fastest-filer of PILs on current issues in news, filed the PIL. The Confederation of the Bar (COB), which was the apex regulatory body of Lawyers conceded that there must be a cap on lawyers’ fees. The President of COB filed an affidavit making averments like exorbitant fee causes a hindrance in access to justice and therefore violates Art. 21. It also causes unequal treatment of the haves and have-nots; and violates Art. 14, inter -alia. The Bar Association of the Supreme Court of Mayeechin (BASCUM) opposed such a move claiming that its members do a lot of pro-bono work, and cross-subsidise in matters. It also pointed out that a general capping may not only have counter-intuitive results, but also violate Art. 19. Given that some

of the questions pertained to interpretation of Constitutional provisions, the PIL was referred to a Constitution bench and has been pending since then. [***Krishna Neel Verma v. Federal Republic of Mayeechin I***]

6. Determination of priority and hearing order of cases has always been a very difficult task at the Supreme Court given the pendency of thousands of cases. As per rules, cases were usually heard chronologically, but for urgent cases, it was the prerogative of the Chief Justice to permit their listing out of turn. Once listed before an assigned bench, it was then for that bench to decide regarding its hearing as per the board and pending urgent and regular matters. However, it was never easy to make these decisions as listing of each case meant de-listing of another given the fixed hours for which the Court sat. Usually, benches tried to accommodate urgent matters by being flexible in their approach and even sitting till late hours or on weekends where required. Given the high numbers of de-listing, resort is made to '*Mentioning*'. *Mentioning* a matter before the Chief Justice means an oral hearing, which takes place before the first court presided by the Chief Justice, where matters are 'mentioned' regarding their urgency and seeking listing (or deletions, letter for adjournment, or filing of documents etc.). There is no framework governing *Mentionings*, under the Supreme Court Rules, and it is governed by certain circulars issued from time to time.
7. Certain previous Chief Justices were liberal with *Mentionings*, which resulted in *Mentionings* lasting for over an hour. Certain others said Senior Counsels cannot mention, while some said Court 2 or any other court cannot accept *Mentioning* and it must be done only before the Chief Justice. A new circular provided for *Mentioning* before an Hon'ble Registrar, but usually there was no recourse if the Registrar did not agree to the request, at least not in the rules.
8. In the general elections in 2015, a new coalition government came to power. It brought about certain radical moves and a spate of new legislations. One of the legislations brought a constitutional amendment inserting Article 21B, by which right to work was made a fundamental right. It went into effect on Dec 11, 2019. It reads:

Article 21B

"1. Everyone in the territory of Mayeechin has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

2. The right to work, includes the right of everyone to the opportunity to gain living by work which one freely chooses or accepts, and State will take appropriate steps to safeguard this right.

3. Every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work."

9. Certain petitions were filed in the Supreme Court challenging the insertion of Article 21B, to the extent it provided the right to work to everyone in the territory of Mayeechin thus including non-citizens also and taking away the rightful entitlement of citizens. The lead petition was filed by Mr. Krishna Neel Verma, and included arguments to the effect that providing a right to illegal immigrants at par with the citizens amounts to taking away the livelihood of the citizens, it also amounts to treating unequals equally, and given the high rates of

unemployment, this effectively amounts to violation of justice- economic, as well as social.

[Krishna Neel Verma v. Federal Republic of Mayeechin II]

10. Another legislation called the Citizenship Amendment Act, 2019 declared that migrants who fulfil certain conditions will not be treated as illegal migrants under the Act. ¹ A three-judge bench of the Supreme Court [*referring bench*] had an occasion to deal with the issue of accepting migrants on the basis of their religion in a previous case. It referred the matter to a larger bench. While this reference was pending, the Citizenship Amendment Act, 2019 came into force on Dec 12, 2019.

11. Mr. Krishna Neel Verma, the fastest-filer of PILs, filed a Petition in the Supreme Court the very next day challenging the Citizenship Amendment Act, 2019. While the Petition was still ‘defective’ and pending clearance of office objections, he sought the matter to be mentioned. He engaged Dr. Murari Lal, Senior Counsel and one of the leading A listers who agreed to mention the matter pro-bono. Upon mentioning, the Chief Justice was pleased to direct for the matter to be heard by a constitution bench along with the pending challenge to Article 21B.

[Krishna Neel Verma v. Federal Republic of Mayeechin III]

12. On the subsequent request by Mr. Krishna Neel Verma to Dr. Murari Lal for a conference to prepare for hearing, the latter expressed his inability to do it pro-bono but agreed to appear if his full fee is paid. Mr. Krishna Neel Verma approached several other Senior Counsels but no one agreed to do the matter pro-bono. Mr. Verma wrote a letter to the Chief Justice on administrative side, seeking expedited hearing of the previous pending PIL on lawyers’ fee. An administrative order was passed listing this PIL before the same constitution bench which was hearing the other matters.

13. The Constitution of these bench caused some discomfiture to certain judges, in as much as the bench did not include any of the judges of the *referring bench*. In a hitherto unprecedented event, three puisne judges of the Supreme Court held a press conference raising certain issues pertaining to assignment of matters by the Chief Justice. One of the learned judges, who was part of the *referring bench* expressed his surprise over his non-inclusion in the constitution bench. The other aspects discussed were pertaining to constitution of benches by some former Chief Justices where their own conduct was in question, viz. in a sexual harassment case; and in a matter pertaining to certain admissions. The three judges were of the unanimous opinion that the canon of justice must not only be done but seem to have been done stands violated; and when matters in which the outcome affects the Chief Justice, are assigned by the Chief Justice, it is against the constitutional ethos. It was further submitted that in a country where *trial is the punishment*, the decision to keep certain matters pending can by itself decide the course of justice, examples like the challenge to Demonetization, election bonds etc. were given. The three judges also demanded that instead of one, at least five judges must decide all matters pertaining to the roster, listing, and the assignment of matters, and any interested party must recuse. Further, *Mentioning* matters must be brought within the framework of written rules.

14. The Chief Justice took note of the press-conference, and constituted a bench of 11 judges to hear all matters. The order formulated certain questions-preliminary as well as on merits and read thus:

¹ For detailed provisions, refer to the Citizenship Amendment Act, 2019 of India, mutatis-mutandis.

ITEM NO.1 CHIEF JUSTICE'S COURT SECTION I
S U P R E M E C O U R T O F M A Y E E C H I N
RECORD OF PROCEEDINGS

Date: 18/12/2019

This Suo Moto Matter was registered and called on for hearing today. UPON due deliberation, the Court made the following

O R D E R

Upon intimation by the learned Solicitor General, of the concerns raised by my worthy colleagues; I deem it proper to refer the following questions to a bench of 11 senior-most judges of this Court, excluding myself; to reinstate the position of this Court as the Sentinel on the Qui Vive.

Preliminaries

- a. *Whether a judge who has expressed opinion as part of the referring bench, ought to participate in the larger bench hearing the referred case?*
- b. *Whether the master of roster must be deemed to include five senior-most judges of the Supreme Court?*

Merits

- c. **In Krishna Neel Verma v. Federal Republic of Mayeechin I:** *Whether the fees of lawyers must be regulated and whether this Court has the power to lay down any guidelines in this regard?*
- d. **In Krishna Neel Verma v. Federal Republic of Mayeechin II:** *Whether the constitutional amendment inserting Article 21B is liable to be struck down being unconstitutional?*
- e. **In Krishna Neel Verma v. Federal Republic of Mayeechin III:** *Whether the Citizenship Amendment Act, 2019 is liable to be struck down being unconstitutional?*

On the preliminary questions, it is agreed that the learned counsels appearing for the Petitioner side will assist the court in affirmative, and those for Respondent side on the negative.

Matters are directed to be listed in the month of February, pleadings to be completed till then.

[Court Master]

[Court Master]

15. The matters are now fixed for hearing on all the points involved.

Nota Bene:

- a. All references, actual, deeming or fictional; are fictional.
- b. Participants stand advised to devise a “litigation strategy”. The issues can be argued in alternative/without prejudice, be divided into sub-issues, **and can be added to or amended upon**. It is permissible to concede issue(s) at the time of oral arguments subject, however, to appropriate explanation readily available on the query of the bench. However, the written submissions must address all the issues.
- c. Citations should not be without actual para/page references. Unnecessary citations and *passim* references are to be avoided. In case of oral arguments, primary references for all materials being referred **is mandatory**.
- d. The moot problem is the way it is, with full application of the principle of “*as is, there is...whatever where is*”.
- e. Please avoid use of any plastic materials or binding for the Memorials. Use simple color-paper sheets for identification of respective sides.
- f. Please read note ‘c’ again.

**-Drafted by
RISHABH SANCHETI,
ADVOCATE, SUPREME COURT OF INDIA**