

SC recalls order to take up delay in MoP

CJI Dipak Misra

Chief Justice of India (CJI) Dipak Misra, heading a three-judge Bench, on Wednesday openly disagreed with the decision of a two-judge Bench to publicly hear, on the judicial side, the reasons for the government's delay in finalising the norms for appointment of judges to the Supreme Court and High Courts, and appointment of regular High Court Chief Justices.

The three-judge Bench recalled a decision of a two-judge Bench of Justices A.K. Goel and U.U. Lalit on October 27 to investigate the government's reasons for "lingering" over its job of finalising the Memorandum of Procedure (MoP) for appointment of Supreme Court and High Court judges.

That Bench observed in a written order that it is going to be about two years since a five-judge Constitution Bench, after striking down the government's NJAC (National Judicial Appointments Commission) law, tasked the Centre in December 2015 with the job of drafting a fresh MoP to replace the current one with the objective of making judicial appointments transparent. However, no ground was covered in the past months despite the constant to-and-fro of MoP drafts between the Supreme Court Collegium and the Union Law Ministry.

Justices Goel and Lalit issued notice to Attorney-General K.K. Venugopal to explain why the government has dawdled in both the MoP issue and the lack of appointment of regular Chief Justices in High Courts. At present, seven High Courts are led by 'Acting' Chief Justices. In some High Courts, such Chief Justices have been continuing for months.

The Bench of Justices Goel and Lalit had scheduled the next hearing for November 14. However, the case was listed before a new Bench of CJI Misra and Justices A.K. Sikri and Amitava Roy.

On Wednesday, as soon as the Bench convened, CJI Misra made clear his disagreement with the order passed by Justices Goel and Lalit.

"After the Constitution Bench has gone into all this in the NJAC issue, there is no need to go into them now ... these are not matters to be gone into on the judicial side at all. That's all there is to be said," he said at the very beginning of the hearing.

Senior advocate K.V. Vishwanathan, appointed *amicus curiae* in the case by Justice Goel's Bench, told the CJI that the issue revived by his brother judges on October 27 was one of "great concern".

"We are aware of it," the CJI replied.

"There is a feeling that there is a delay. The number of vacancies in High Courts is shocking. There is a right to access to justice," Mr. Vishwanathan persisted.

"And we know how to deal with it ... What do you know about what we have done about it?" the CJI said.

"There is no need to proceed in view of the judgment of the NJAC," the CJI recorded in a short order, disposing of the matter.

A marked departure

The CJI's refusal to plunge headlong into a collision course with the government is a marked departure from the open-court confrontations his predecessor T.S. Thakur used to have last year with the government over the MoP and the rising vacancies in the higher judiciary.

In one such hearing in August 2016, Justice Thakur launched the sharpest ever public attack on the government by asking whether the Centre intended to bring the entire judicial institution to a "grinding halt" by sitting on recommendations of the Collegium for appointment and transfer of judges to High Courts. He made it clear to the Centre that the apex court would not shy away from a confrontation with the government if driven to a corner.

In full view of the members of the Supreme Court Bar, litigants and the media, Justice Thakur cautioned the government that if matters continued in the same strain, the court would be "forced" to judicially intervene. However, the hearings lost steam after Justice Thakur retired early this year and the stalemate over the MoP continued.

END

Downloaded from crackIAS.com

© **Zuccess App** by crackIAS.com

crackIAS.com