

Dushyant Dave
Senior Advocate

6th December 2023

To,
Hon'ble Mr. Justice D.Y. Chandrachud,
Hon'ble the Chief Justice of India,
Supreme Court of India,
New Delhi.

Dear Sir,

I, am deeply anguished at certain happenings about the listing of cases by the Registry of the Supreme Court of India and hence I am constrained to address this open letter to you as the Master of the Roster on your administrative side.

Article 124 of the Constitution of India provides that,

"There shall be a Supreme Court of India consisting of a Chief Justice of India and, until Parliament by law prescribes a larger number, of not more than [seven] other Judges.

You have administrative control over the court, but on the judicial side, "you are the first among the equals" As Master of the Roster you alone have the prerogative to constitute bench and allocate cases to the benches so constituted.

Under Article 145 of the Constitution of India, the Supreme Court has been given powers to make rules "for regulating generally the practice and procedure of the Court subject to approval of the President", including;

"Rules as to the procedure for hearing appeals and other matters pertaining to appeals including the time within which appeals to the Court are to be entered".

Supreme Court Rules, 2013 have been framed, which inter alia provide in Order 3 Rule 2 as under:

"The Chief Justice may assign, and the Secretary General, may, with the approval of the Chief Justice, delegate, to an Additional Registrar, Deputy Registrar or Assistant Registrar, any function required by these rules to be exercised by the Registrar."

Rules of 2013 are silent as to the powers of the Master of the Roster to constitute roster, constituting Benches and for allocation of the cases.

Handbook on Practice and Procedure of the Court and Office Procedure on Judicial side published by the Supreme Court of India in 2017, however, provide in Chapter VI Para 1 as under:

"The roster shall be prepared by the Registrar (J-1) under the orders of the Chief Justice. It may contain general or special instructions regarding assignment/allocation of work to a Bench and includes allocation of work of a Bench, on account of non-availability, to another Bench."

Para 2 deal with contingencies and provide as under: -

"In order to meet contingencies, the Chief Justice may, from time to time, direct the Registrar (J-1) to prepare roster instructions or amendments for re-allocation of judicial work."

Therefore, Roster once prepared under your direction must guide the assignment/allocation of work to a Bench including the allocation of work of a Bench on account of non-availability, to another Bench is final.

Chapter XIII deals with the listing of cases and commands that *"The Registrar (J-1) shall list the cases before the Benches in accordance with the roster under the directions of the Chief Justice."*

Section dealing with "Cases, Coram & Listing" provides in Para 2 as under: -

"Fresh cases are allocated as per subject category through automatic computer allocation, unless coram is given by the Chief Justice or the Filing Counter:"

Para 3 provides that -

"The coram of the Bench where -

- a) a main case has been listed;*
- b) notice has been issued till grant of special leave to appeal;*
- c) a case has been dismissed, allowed or disposed of; and*
- d) a case has been heard in-part at admission hearing stage.*

shall be updated in the computer for future listing of admission hearing cases"

Para 6 specifically says: -

"If first coram is not available on a particular day on account of retirement, the case shall be listed before the Judge constituting the second coram. If second coram is also not available, the case shall not be listed on that day."

This position is amplified in Para 10 & 11. Thus, once the case has been listed or notice has been issued or has been dismissed or disposed of or has been heard in part at admission hearing stage the case thereafter can only be listed before the bench of first coram and none other.

Para 47 deals with criminal matter and provide as under: -

"The criminal cases, except writ petition (criminal) but excluding habeas corpus petitions, where service is complete but affidavit in opposition has not been filed, shall be listed before the regular Bench having the coram in the case and not under incomplete category before the Court of Registrar."

To ensure that this sound practice is followed; if any direction is given about listing of any case by a superior orally, the concerned official must seek written confirmation.

Notes under the Section provide as under: -

"Save in case of a single coram, wherever a main case or application could not be listed before the first coram, it shall be listed before the second and then third coram, wherever applicable, and, if available, in seniority"

Note 2 gives the Chief Justice the power to list the case in case of non-availability of single coram or members of the bench on account of retirement or otherwise. If not listed through computer allocation.

Note 3 however gives the following power to the Chief Justice. This is an extraordinary power to upset the roaster and to "pick and choose" and allocate and assign any appeal or cause or matter to any judge or judges of the Court. However, the Chief Justice can only exercise the power as per the practice and in case the coram as per roaster is available the Chief Justice cannot exercise power to take away any case before the available coram and place it before another.

We have no doubt that as Master of Roaster, you have not exercised power under Note 3 referred above as no information is available in this regard.

This Hon'ble Court has in this regard held that;

"In his capacity as a Judge, the Chief Justice is primus inter pares: the first among equals. In the discharge of his other functions, the Chief Justice of India occupies a position which is sui generis. Article 124(1) postulates that the Supreme Court of India shall consist of a Chief Justice of India and other Judges. Article 146 ["146. Officers and servants and the expenses of the Supreme Court. – (1) Appointments of officers and servants of the Supreme Court shall be made by the Chief Justice of India or such other Judge or officer of the Court as he may direct:

Provided that the President may by rule require that in such cases as may be specified in the rule, no person not already attached to the Court shall be appointed to any office connected with the Court, save after consultation with the Union Public Service Commission.(2) Subject to the provisions of any law made by Parliament, the conditions of service of officers and servants of the Supreme Court shall be such as may be prescribed by rules made by the Chief

Justice of India or by some other Judge or officer of the Court authorised by the Chief Justice of India to make rules for the purpose:

Provided that the rules made under this clause shall, so far as they relate to salaries, allowances leave or pensions, require the approval of the President.(3)

The administrative expenses of the Supreme Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the Court, shall be charged upon the Consolidated Fund of India, and any fees or other moneys taken by the Court shall form part of that Fund.”] reaffirms the position of the Chief Justice of India as the head of the institution. From an institutional perspective the Chief Justice is placed at the helm of the Supreme Court. In the allocation of cases and the constitution of Benches the Chief Justice has an exclusive prerogative. As a repository of constitutional trust, the Chief Justice is an institution in himself. The authority which is conferred upon the Chief Justice, it must be remembered, is vested in a high constitutional functionary. The authority is entrusted to the Chief Justice because such an entrustment of functions is necessary for the efficient transaction of the administrative and judicial work of the Court. The ultimate purpose behind the entrustment of authority to the Chief Justice is to ensure that the Supreme Court is able to fulfil and discharge the constitutional obligations which govern and provide the rationale for its existence. The entrustment of functions to the Chief Justice as the head of the institution, is with the purpose of securing the position of the Supreme Court as an independent safeguard for the preservation of personal liberty. There cannot be a presumption of mistrust. The oath of office demands nothing less.”

Yet, I have personally come across a number of cases listed before various Hon'ble Benches upon first listing and/ or in which notice have been issued, being taken away from those Hon'ble Benches and listed before other Hon'ble Benches. Despite first coram being available the matters are being listed before a Hon'ble Benches in which second coram presides. Matters listed before Court No. 2, 4, 6, 7, amongst others have been shifted out and listed before other Hon'ble Benches in clear disregard of the Rules, the Handbook on Practice and Office Procedure referred above and established

Practice and Convention. Curiously, the Seniority of the first coram is also being ignored in doing so. Our attention is also been drawn by esteemed Colleagues at the Bar, Seniors, and Advocates on Record (AoRs), about various cases in which they have appeared in the first instance on numerous occasions, later the matters being listed before different Benches. It would not be proper for me to enumerate these matters as many of them are pending.

But it would not be out of place to mention that these matters include some sensitive matters involving human rights, Freedom of Speech, Democracy, and Functioning of Statutory and Constitutional Institutions.

On your appointment, strong hopes were created in the minds of Citizens that under your Leadership, the Supreme Court of India will rise to greater heights, the march towards which has somehow paused for some time earlier. The scars caused on account of such improprieties in the past few years on justice delivery have not healed as yet.

Sir, I personally hold you in high esteem and You and your Colleagues and all those associated with Administration of Justice in the Country are aware that that I have highest respect and love for Judiciary. But I will be failing in my duty imposed by the Supreme Court itself when it held that, *"the lawyers are supposed to be fearless and independent in the protection of rights of litigants"* And *"What lawyers are supposed to protect, is the legal system and procedure of law of deciding the cases."*

It was also held that *"Independent Bar and independent Bench form the backbone of Democracy. In order to preserve the very independence, the observance of constitutional values, mutual reverence and self-respect are absolutely necessary. The Bar and Bench are complimentary to each other. Without active cooperation of the Bar and the Bench, it is not possible to preserve the Rule of Law and its dignity"*.

Feared that this Hon'ble Court; "Where the Bar has not performed the duty independently and has become a sycophant that ultimately results in the denigrating of the judicial system and judiciary itself."

I must place on regret that I have to take recourse to writing this open letter as the efforts by some of us to meet you personally have not yielded any result, despite of appointment having been sought months ago by a Senior and Respected colleague for and on behalf of many of us. I personally met the Secretary General and apprised him of the anxiety and misgivings of the bar in this regard. Emails sent to Registrar (J-I) by Advocates on Record (AoRs) making serious grievance about it have not been responded, far from course correction taking place. Rules of 2013 provide an appeal to the Hon'ble Chamber Judge in such matters. Perhaps to avoid such appeals being filed the Registrar (J -I) are refusing anything in writing.

Sir, this does not augur well for the Institution of Supreme Court of India under your Leadership. The Institution is highly respected by all. That respect must continue forever, in all respects. We would therefore urge you to look into this immediately and take corrective measures.

Your Sincerely,

With Regards,



Dushyant Dave (Senior Advocate, Supreme Court of India)

CC:

To the Hon'ble Judges of the Supreme Court of India.