

## **Topic: Appointment Of District Judges Under Article 233**

Name of the Case: State of Kerala v. A Lakshmikutty, AIR 1987 SC 331

Bench: Justice A.P. Sen and Justice B.C. Ray

Issue: Whether the High Court could issue a writ of mandamus to the governor of state directing him to act as per the recommendation of High Court to fill up the vacancies in the post of district judge reserved for directorship meant from the practicing member of the bar under Article 233 (1) of the Constitution of India?

Fact of the case: Judicial review of the acts of governor not to appoint candidates of district judges post as recommended by the High Court and not to communicate on this matter with the concerned High Court.

Judgment: The Supreme Court has greatly discussed the respective roles of government and the High Court in the matter of appointment of district judges. This matter is governed by Article 233(1) of the Constitution according to which the appointment of district judges is to be made by the State Governor in consultation with the High Court under Article 233(1). A person not being in service of the state or of the Centre can be appointed only when recommended by High Court under Article 233(2). Some of the salient point which emerges from the court's opinion are as under;

The power of State Government to appoint district judges is not absolute and unfettered but is hedged in with restrictions. The power is conditioned by the requirement of consultation with the High Court.

The power of appointment is an executive function of the government.

The eligibility for appointment as a district judge by director depends entirely on the High Court's recommendation. The State Government cannot appoint anyone from outside the panel of names forwarded by the High Court.

Conversation between the High Court and the State Government, as envisaged by Article 233(1), must be "real, full and effective". This means that there must be an interchange of views between the High Court and the State Government. On this point, the court has emphasised as under; "if the State Government were simply to give lip service to the principle of consultation and depart from the advice of the High Court in making judicial appointments without referring back to the High Court, the difficulties which prevent the government from accepting its advice, the consultation would not be effective and any appointment of a person as a district judge under Article 233(1) would be invalid."

Normally, as a matter of rule, the recommendation of the High Court for appointment of district judge should be accepted by State Government. If, in any particular case, the State Government for "good and valid reasons" find it difficult to accept the recommendations of the High Court, the government should communicate its view to the High Court."

In the instant case, the High Court forwarded to the State Government, a panel of names for appointment as district judges. For some reason, the State Government did not want to accept the final list but it did not communicate its view to the High Court in the matter. The Supreme Court ruled that before rejecting the panel forwarded by the High Court, the government should have conveyed its view to the High Court to elicit its opinion. The government should have taken the High Court into confidence. Accordingly, a mandamus was issued to the State Government requiring it to communicate

its view to the High Court to elicit its opinion.