Kamini Jaiswal vs Union Of India on 14 November, 2017

Equivalent citations: AIR 2017 SUPREME COURT 5334, 2018 (1) SCC 156, AIR 2018 SC(CRI) 146, (2018) 1 MAD LJ 661, (2017) 13 SCALE 417, (2017) 4 CURCRIR 225, (2017) 4 CRIMES 249, (2017) 4 DLT(CRL) 738, (2018) 1 KER LJ 163, (2018) 2 MH LJ (CRI) 573, 2018 (1) SCC (CRI) 297

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Bench: A.M. Khanwilkar, Arun Mishra, R.K. Agrawal

REPORTAB

IN THE SUPREME COURT OF INDIA

CRIMINAL ORIGINAL JURISDICTION

WRIT PETITION [CRIMINAL] NO.176 OF 2017

Kamini Jaiswal … Petition

Vs.

Union of India & Anr. … Responde

JUDGMENT

1. The facts are disturbing in the instant case. By moving two successive petitions, one on Wednesday (8.11.2017) and the other on Thursday (9.11.2017), identically worded similar petitions, one by the Commission for Judicial Accountability and Reforms (CJAR) and the other by Ms. Kamini Jaiswal, Advocate of this Court, who is a member of CJAR. Both the petitions are identically worded. The petition filed on Wednesday was to be listed on Friday (10.11.2017) before a Bench presided by Hon'ble A.K. Sikri and Ashok Bhushan, JJ. As stated by Shri Prashant Bhushan, one of the counsel representing the petitioner, the said fact was informed to him by the Registry of the Court on 8.11.2017. Learned counsel further states that as the petition had not been listed before same Bench which ordered its listing for Friday, i.e. Court No.2, it became necessary to file the present second petition i.e. W.P. (Crl.) No.176/2017 by Ms. Kamini Jaiswal, Advocate of this Court.

2. A prayer was made to Court No.2 to hear the matter on the same day; urgency in the matter had been urged by Shri Dushyant Dave, learned senior counsel, who mentioned the matter. Order dated 9.11.2017 passed by Court No.2 is extracted hereunder :

"Issue notice.

Dasti, in addition, is permitted.

This matter was taken on Board upon being mentioned in the morning at 10.30 a.m. On an inquiry from the Bench regarding the urgency in the matter, it was brought to the notice of the Court that a certain case is registered by the Central Bureau of Investigation against a retired High Court Judge of this country containing serious allegations implicating the said Judge, shown as an accused in the FIR No. 10(A) under Section 8 and Section 120 B of the Prevention of Corruption Act, 1988. The FIR contained certain allegations which are disturbing. The allegations pertain 2 to the functioning of this Court. On perusal of the FIR which was placed before us in the morning, we thought it necessary and proper to take up the matter immediately. Therefore, permission was granted to move the matter today at 12.45 p.m. before this Court. Accordingly the papers are placed before us at 12.45 p.m. Mr. Dushyant Dave, learned senior counsel makes submissions highlighting various aspects of the matter, the details of which we do not propose to make in this order. But, at the same time, we are also duty bound to place the developments that when the hearing of the matter was in progress, the Officer of the Registry placed a xerox copy of the proceedings purportedly issued by Hon'ble the Chief Justice of India, a copy of which is annexed to this Order.

Having regard to the totality of the circumstances, we deem it appropriate that this matter be heard by the Constitution Bench of the first five Judges in the order of seniority of this Court. Having regard to the importance of the matter, we also deem it appropriate that the matter be listed on Monday, the 13th November, 2017. Having regard to the nature of the case, it is also necessary to make an interim order regarding the custody of the case diary and all the materials collected by the second respondent during the course of the investigation of the above-mentioned crime. We, therefore, deem it appropriate to direct the second respondent to produce the entire material collected by the CBI in the course of 3 the investigation of the crime and keep it in a sealed cover and produce the same before the Constitution Bench on Monday, the 13th November, 2017.

Communicate this order to the second respondent forthwith."

3. In the other matter, i.e. W.P. (Crl.) No.169/2017, filed by CJAR, which was listed before a Bench presided by Hon'ble A.K. Sikri, J., following order was passed by the Bench on Friday, the 10th November, 2017 :

"Mr. Prashant Bhushan, learned counsel has brought to our notice order dated 09.11.2017 passed in W.P.(Crl.) No.176/2017 referring the matter to the Constitution Bench. Let the matter be placed before Hon'ble the Chief Justice for passing appropriate orders for listing this matter.

> Mr. R.S. Suri, senior advocate/President, Supreme Court Bar Association (SCBA) submits that SCBA also wants to get itself impleaded as a party respondent and render assistance. On an oral request of Mr. Suri, the prayer is allowed and the SCBA is impleaded as a party respondent."

4. In the writ petitions, a prayer has been made to constitute a Special Investigation Team (SIT), headed by retired Chief Justice of India, to investigate the offences arising out of FIR being RC.10(A)/2017-AC. III dated 19.9.2017 recorded at New Delhi by the CBI and those connected therewith and take consequential action thereafter in accordance with law. A prayer was also made to direct the CBI, to produce before this Court for its perusal and, preserve and protect, all evidences/materials collected so far and hand over all the materials/evidences collected so far in the FIR to the SIT to be constituted by this Court.

5. It has been averred in the petitions, filed under Article 32 of the Constitution of India, that the FIR, relating to criminal conspiracy and of taking illegal gratification to influence the outcome of a pending case before this Court, reveals a nexus between the middlemen, Hawala dealers and senior public functionaries, including persons in the judicial field. The FIR has been registered with respect to case of Prasad Education Trust at Lucknow. The medical college set up by the Trust was debarred by the Government from admitting students for the years 2017-18 and 2018-19. The FIR lodged by the CBI names a retired Judge of the High Court as an accused, who had allegedly been negotiating through a middleman to get a favourable order in the petition pending before this Court. The said petition was heard by a Bench headed by Hon'ble Chief Justice of India. Thus, taking this as a pretext, in the instant petition, it has been averred, that the FIR casts a cloud on the judiciary at the highest level. Thus, the prayer has been made that, investigation in relation to aforesaid FIR should be handed over to an SIT headed by a retired Chief Justice of India and not left to the agency controlled by the Government; with the averment that in order to restore the confidence of the public in the judiciary, the agency controlled by the Government should not be allowed to undertake the said investigation. It is further averred in the petition, that since the matter had been heard by a Bench presided over by Hon'ble Chief Justice of India, propriety demands that the Hon'ble Chief Justice of India ought not to deal with the present petition either on the judicial side, or even on the administrative side. Therefore, present petition can neither be heard by a Bench presided by the Hon'ble Chief Justice of India, nor can it be assigned to any other Bench by Hon'ble Chief Justice of India in his administrative capacity. Further, that the petitioner has not made any representation to the respondent; because of the extreme urgency in the matter, the writ petition has been filed. The FIR dated 19.9.2017 has been placed on record as Annexure P1.

6. It is further averred, that the College had been granted permission on 20.8.2016 by the Oversight Committee of the Medical Council of India; on failure to fulfill certain conditions, it got debarred from admitting the students for two academic sessions i.e. 2017-18 and 2018-19 as infrastructure and other facilities were found to be deficient. W.P. (C) No.442/2017 was filed in this Court, which was connected with WP (C) No.411/2017 in which an order was passed on 1.8.2018, to provide an opportunity of hearing to the petitioner(s) in that case and thereafter to pass a reasoned decision de novo. Hearing was granted, and the Hearing Committee of the Government agreed with the aforesaid decision of the Ministry, not to permit the college for two years. Another writ petition was

thereafter, filed in this Court by the said Prasad Education Trust; it was withdrawn on 24.8.2017, with liberty to move the Allahabad High Court. Thereafter, a writ petition was filed on 25.8.2017 in the High Court at Allahabad; an order was passed on 25.8.2017 itself that the College shall not be delisted from the list of colleges notified for counseling till the next date of listing i.e. 31.8.2017. The Medical Council of India (MCI) filed an SLP against the said order which was disposed on 29.8.2017 and permission was sought to file a petition before this Court which was accorded. Petition was filed on 31.8.2017; the case was listed on 11.9.2017; and, this Court ordered on 18.9.2017, that there shall be no renewal for the academic session 2017-18, however, the MCI may inspect again for the session 2018-19. No further order was passed by this Court and accordingly the petition was disposed of. It was for the MCI to take a decision in the matter not only for continuity of provisional letter of permission for academic session 2016-17 and renewal purposes only for 2018-19. No relief was granted for the current academic session 2017-18.

7. On 19.9.2017, an FIR was registered against the following persons in connection with the case :

1. Shri I.M. Quddusi, retired Judge of the High Court of Odisha.

2. Smt. Bhawana Pandey r/o GK. New Delhi (private person)

3. Shri B.P. Yadav (private person)

4. Shri Palash Yadav (private person)

5. Shri Sudhir Giri (Private person)

6. Shri Biswanath Agrawala, r/o HIG – 136, Phase 1, Kanan Vihar, Bhubaneshwar, Odisha (Private person)

7. Other unknown public servants and private persons.

8. It was alleged in the FIR, that Mr. B.P. Yadav had requested Justice I.M. Quddusi and Smt. Bhawana Pandey to get the matter settled in the apex Court through their contacts. They engaged Mr. Biswanath Agarwala, a private person and a resident of Bhubaneswar, Orissa for getting the matter settled in the apex Court. Mr. Biswanath Agrawala claimed that he would get the matter favourably settled. He demanded huge gratification for inducing the public servants by corrupt and illegal means. Further, that Mr. B.P. Yadav, Mr. Palash Yadav, Justice I.M. Quddusi, Mrs. Bhawana Pandey and Mr. Sudhir Giri were all likely to meet Mr. Biswanath Agrawala for delivering the agreed illegal gratification at Delhi shortly.

The FIR was recorded on 19.9.2017 whereas this Court had already disposed of the matter on 18.9.2017. It is averred in the petition that the case discloses commission of offence punishable under section 8 of the Prevention of Corruption Act, 1988 and section 120B of the IPC against the named persons as well as against the unknown public servants and private persons. It is further

averred in the petition that since the matter involves persons placed at the highest echelons of power including justice delivery system and in subsequent raids made by the CBI it has recovered close to Rs.2 crores in cash, the agency has seized Rs.1 crore which the Hawala operator had handed over to an aide of the retired Judge I.M. Quddusi.

9. There was an order passed by a Bench consisting of Hon'ble A.K. Sikri, J. on 10.11.2017 that the matter be placed before Hon'ble Chief Justice of India for listing the matter. The matter was considered on administrative side by the Hon'ble Chief Justice of India and he constituted a 5-Judge Constitution Bench which consisted of and presided over by Hon'ble Chief Justice of India. The Constitution Bench answered the question as a piquant situation had arisen for listing the case by judicial order before senior-most 5 Judges in order of seniority passed in the present petition and the aforesaid order dated 10.11.2017 passed in the case of CJAR in WP (Crl.) No.169/2017 by Hon'ble A.K. Sikri, J. There was variance between the orders passed by the two Benches; one by Court No.2 and the other presided over by Hon'ble A.K. Sikri, J. The order in this case was passed on 9.11.2017 for listing the matter before 5 Hon'ble Judges on Monday i.e. 13.11.2017 and Hon'ble A.K. Sikri, J. requested the Hon'ble Chief Justice of India to constitute an appropriate Bench for hearing the other matter which was similar. The matter was referred to a Constitution Bench of this Court to decide as to what should be done in such a situation as only working day available was 10.11.2017. The Constitution Bench held that the Hon'ble Chief Justice of India is the master of the roster as per the decision of this Court in State of Rajasthan v. Prakash Chand & Ors. (1998) 1 SCC 1 wherein this Court had laid down thus :

> "1) That the administrative control of the High Court vests in the Chief Justice alone. On the judicial side, however, he is only the first amongst the equals.
>
> (2) That the Chief Justice is the master of the roster. He alone has the prerogative to constitute benches of the court and allocate cases to the benches so constituted.
>
> (3) That the puisne Judges can only do that work as is allotted to them by the Chief Justice or under his directions.
>
> (4) That till any determination made by the Chief Justice lasts, no Judge who is to sit singly can sit in a Division Bench and no Division Bench can be split up by the Judges constituting the bench themselves and one or both the Judges constituting such bench sit singly and take up any other kind of judicial business not otherwise assigned to them by or under the directions of the Chief Justice.
>
> Xxxxx (6) That the puisne Judges cannot "pick and choose" any case pending in the High Court and assign the same to himself or themselves for disposal without appropriate orders of the Chief Justice.
>
> (7) That no Judge or Judges can give directions to the Registry for listing any case before him or them which runs counter to the directions given by the Chief Justice."

10. A Constitution Bench of this Court held that what has been laid down in Prakash Chand (supra) would apply proprio vigore as regards the power of the Hon'ble Chief Justice of India. Though the Hon'ble Chief Justice is the first among equals as far as the roster is concerned, the Hon'ble Chief Justice of India has the prerogative to constitute the Benches of the Court and allocate cases to the Benches so constituted. Following observations have been made by the Constitution Bench of this Court :

"The aforesaid position though stated as regards the High Court, we are absolutely certain that the said principle is applicable to the Supreme Court. We are disposed to think so. Unless such a position is clearly stated, there will be utter confusion. Be it noted, this has been also the convention of this Court, and the convention has been so because of the law. We have to make it clear without any kind of hesitation that the convention is followed because of the principles of law and because of judicial discipline and decorum. Once the Chief Justice is stated to be the master of the roster, he alone has the prerogative to constitute Benches. Needless to say, neither a two-Judge Bench nor a three-Judge Bench can allocate the matter to themselves or direct the composition for constitution of a Bench. To elaborate, there cannot be any direction to the Chief justice of india as to who shall be sitting on the Bench or who shall take up the matter as that touches the composition of the Bench. We reiterate such an order cannot be passed. It is not countenanced in law and not permissible.

An institution has to function within certain parameters and that is why there are precedents, rules and conventions. As far as the composition of Benches is concerned, we accept the principles stated in Prakash Chand (supra), which was stated in the context of the High Court, and clearly state that the same shall squarely apply to the Supreme Court and there cannot be any kind of command or order directing the Chief Justice of India to constitute a particular Bench."

11. The order passed by the Division Bench of this Court on 9.11.2017 in this matter has been rendered ineffective and the Hon'ble Chief Justice of India has constituted 3 Judge Bench to hear the matter on 13.11.2017. Thus it has been heard by the Bench as formed by Hon'ble Chief Justice of India

12. It was urged by Shri Shanti Bhushan, learned senior counsel, and Mr. Prashant Bhushan, learned counsel for the petitioner, that, this Bench could not hear the matter, as it has been constituted by Hon'ble Chief Justice of India. The order passed by a Constitution Bench of this Court on 10.11.2017, in the case of CJAR, that Hon'ble Chief Justice of India would assign the present matter to an appropriate Bench – that pronouncement cannot be made by a judicial order; that order cannot hold the field. The order dated 9.11.2017 passed by Court No.2 should prevail, and the matter is required to be heard by the 5 senior-most Judges of this Court in the order of seniority. A judicial order cannot be violated, and it could not have been rendered ineffective by the Constitution Bench decision of this Court dated 10.11.2017. Prayer was also made that though there is no allegation against one of the Hon'ble Judges

comprising this Bench (one of us) as Hon'ble A.M. Khanwilkar, J. was a member of the Bench which disposed of the matter of Prasad Education Trust vide order dated 18.9.2017, he should recuse from the matter. No written application has been filed for his recusal from hearing. Ms. Kamini Jaiswal has also submitted certain points for consideration in writing in which, it has been urged, that the whole intention and objective of the petition was, and is, to protect the independence, integrity and reputation of the Institution, the Supreme Court, by seeking constitution of SIT headed by retired Chief Justice of India. Further, not even a single allegation has been made against any member of the judiciary, leave alone the Hon'ble Chief Justice of India or any Supreme Court Judge. Explanation has been given as to how a member of CJAR could file a petition even when her organization had filed a similar petition before; submitting that a member of the organization is entitled to exercise right separately in her own right to file a petition separate from the organization. Further, that Article 144 of the Constitution renders it impermissible for a different Bench of the Supreme Court, even if it is a Bench of the Hon'ble Chief Justice of India, to overrule an order passed by another Bench of the Supreme Court, as orders passed by the Supreme Court are binding, under Article 144 of the Constitution, even upon the Hon'ble Chief Justice of India and other Benches of the Supreme Court as held in Rupa Ashok Hurra v. Ashok Hurra & Anr. (2002) 4 SCC 388. She has reiterated that Hon'ble Khanwilkar, J. ought to have recused himself from hearing this case as he was one of the Judges hearing the matter relating to medical bribery scam alleged in the FIR registered by the CBI.

13. It was submitted by Shri K.K. Venugopal, learned Attorney General for India, appearing in his official capacity, that such a petition as the present one cannot be entertained. The petitioner has unnecessarily cast doubt on the entire system. If an unscrupulous person does or says anything irresponsible and illegal, and demands a bribe in the name of a Judge, the whole system cannot be brought under disrepute. There is absolutely no material to link the highest judiciary of the country with the so called act of Retired Justice I.M. Qudussi and the persons named in the FIR. Thus the petition being wholly unnecessary, deserves to be dismissed. Better it was that not to prefer such a petition.

He has relied upon the decision rendered by the United States Supreme Court, in the case of Bradley v. Fisher 80 US 335 (1871). It has been held thus:

"12. Some just observations on this head by the late Chief Justice Shaw, will be found in Pratt v. Gardner, [2 Cushing, 68.] and the point here was adjudged in the recent case of Fray v. Blackburn, [3 Best & Smith, 576.] by the Queen's Bench of England. One of the judges of that bench was sued for a judicial act, and on demurrer one of the objections taken to the declaration was, that it was bad in not alleging malice. Judgment on the demurrer having passed for the defendant, the plaintiff applied for leave to amend his declaration by introducing an allegation of malice and corruption; but Mr. Justice Compton replied: 'It is a principle of our law that no action will lie

against a judge of one of the superior courts for a judicial act, though it be alleged to have been done maliciously and corruptly; therefore the proposed allegation would not make the declaration good. The public are deeply interested in this rule, which indeed exists for their benefit, and was established in order to secure the independence of the judges, and prevent them being harassed by vexatious actions;'—and the leave was refused. [In Scott v. Stansfield (3 Law Reports, Exchequer, 220), a judge of a county court was sued for slander, and he put in a plea that the words complained of were spoken by him in his capacity as such judge, while sitting in his court, and trying a cause in which the plaintiff was defendant. To this plea a replication was filed, that the words were spoken falsely and maliciously, and without any reasonable, probable, or justifiable cause, and without any foundation whatever, and not bon a fide in the discharge of the defendant's duty as judge, and were wholly irrelevant to the matter before him. To the replication the defendant demurred; and the Court of Exchequer held the demurrer well taken. 'I am of opinion,' said the Chief Baron, 'that our judgment must be for the defendant.The question raised upon this record is whether an action is maintainable against the judge of a county court, which is a court of record, for words spoken by him in his judicial character, and in the exercise of his functions as judge in the court over which he presides, where such words would as against an ordinary individual constitute a cause of action, and where they are alleged to have been spoken maliciously and without probable cause, and to have been irrelevant to the matter before him. The question arises, perhaps, for the first time, with reference to a county court judge, but a series of decisions uniformly to the same effect, extending from the time of Lord Coke to the present time, establish the general proposition that no action will lie against a judge for any acts done or words spoken in his judicial capacity in a court of justice. This doctrine has been applied not only to the superior courts, but to the court of a coroner, and to a court martial, which is not a court of record. It is essential in all courts that the judges who are appointed to administer the law should be permitted to administer it under the protection of the law, independently and freely, without favor and without fear. This provision of the law is not for the protection or benefit of a malicious or corrupt judge, but for the benefit of the public, whose interest it is that the judges should be at liberty to exercise their functions with independence, and without fear of consequences."

14. Shri Tushar Mehta, learned Additional Solicitor General, appearing on behalf of the Government of India, has submitted, that it was wholly improper to file two successive petitions in this Court seeking similar relief. No disclosure has been made in the second petition about filing of the earlier petition for the same cause of action and reliefs. Similar petitions with the same set of Advocates were filed and unfortunately the prayer was made on both days by Shri Dushyant Dave, learned senior counsel of this Court to list the matters, and such successive petitions identically worded could not have been filed in this Court. It was clearly a case of forum hunting. The fact that case of CJAR was already listed before a Bench presided by Hon'ble A.K. Sikri, J., it was highly improper to file another petition and seek its hearing by Court No.2 on the said very day i.e. 9.11.2017 at 12.45 p.m. There was no tearing urgency in the matter to do so. Unnecessarily, the Institution has been

brought to be scandalized for no good cause. The petition and entire conduct aims at bringing disrepute to this Court without any rhyme or reason. The President of the Supreme Court Bar Association (SCBA), Mr. Suri, was also present. They have submitted that the SCBA has already placed its point of view while its case was heard by a Constitution Bench of this Court, in that they have opposed filing of such petitions. That petition brings disrepute to this Court, and it was a contemptuous act. Their stand was that, such petition ought not to have been preferred and, action be taken against the concerned individuals.

15. Firstly, we consider the question whether we can hear the matter as the Bench has been formed by Hon'ble Chief Justice of India in exercise of his administrative power. That issue stands concluded by the decision of 5-Judge Bench of this Court. The Constitution Bench of this Court has clearly held that Hon'ble Chief Justice of India is the master of the roster, and any order which had been passed contrary to the order of the Constitution Bench, was held to be ineffective in law, not binding on the Hon'ble Chief Justice of India. The Hon'ble Chief Justice of India has constituted a Bench on administrative side after the aforesaid decision of this Court in which, this precise question, as to the competence of the Chief Justice to constitute a Bench, has been decided; as such, the submission made by Shri Shanti Bhushan, learned senior counsel, is hereby rejected. We cannot reopen this issue. The decision is binding.

16. It was submitted, that Article 144 of the Constitution of India binds this Court and, renders it impermissible, for any other Bench of the Supreme Court, even if it is a Bench presided by Hon'ble Chief Justice of India to overrule an order passed by another Bench of the Supreme Court. All orders passed by the Supreme Court are binding under Article 142 of the Constitution of India, even upon the Chief Justice of India and other Benches of the Supreme Court, as held in Rupa Ashok Hurra (supra). The submission so raised is totally devoid of substance, as a Constitution Bench of this Court has decided the question that no such order, constituting a particular Bench, can be passed; that would include the order dated 9.11.2017, passed by Court No.2, in WP (Crl.) No.176/2017. It cannot hold the field in view of the decision of Constitution Bench of this Court, which expounds that the Hon'ble Chief Justice of India has the prerogative to constitute a Bench, notwithstanding any judicial order passed to the contrary. As a matter of fact, there is no question of applicability of Article 144 or 142 in this case. In case they are attracted, it is the decision of the Constitution Bench that is binding on all concerned, as the precise question has been dealt with by the Constitution Bench of this Court in the aforesaid case of CJAR.

17. An unprecedented situation has been created by the judicial order dated 9.11.2017. The present petition was filed on 9.11.2017, a similar petition, filed by CJAR, had been mentioned on 8.11.2017 by same set of counsels before Court No.2 as the Hon'ble Chief Justice of India was presiding the Constitution Bench. Obviously, mentioning could have been made before Court No.2; but, when mentioning had been done in a similar matter filed by CJAR by Mr. Dushyant Dave, learned senior counsel and Mr. Prashant Bhushan, learned counsel, as is apparent from the order of mentioning, and the case had been ordered to be listed on Friday, i.e. 10.11.2017, and the petition filed by CJAR was listed before the Bench of Hon'ble Sikri, J., to file and mention this similarly worded identical petition on the next day with a similar relief; it was mentioned, by one of the same senior counsel, Mr. Dushyant Dave, before Court No.2, requesting to take it up on the same day. That clearly

amounted to forum hunting. There was absolutely no urgency in the matter to make the mention again by filing the petition on 9.11.2017 itself. They wanted the matter not to be heard by another Bench of this Court presided by Hon'ble A.K. Sikri, J. Reasons were asked for by us as to why two petitions were filed. Shri Prashant Bhushan, learned counsel has explained the filing of second petition thus : that the Registry had informed him that the matter was not to be listed before Court No.2 on Friday, but before Hon'ble A.K. Sikri, J., as per the administrative instructions of Hon'ble Chief Justice of India. Therefore, fresh petition was filed by Ms. Kamini Jaiswal. This could not have been the valid reason to file a fresh writ petition identically worded as suggested by Shri Prashant Bhushan, learned counsel appearing on behalf of the petitioner though Ms. Kamini Jaiswal, learned counsel, in the written note, which she has submitted after hearing was over, has tried to explain that a member of an organization is entitled to exercise her right to file a petition separately from the organisation. Be that as it may. Even if petition could have been filed, being, arguendo, within the right of a member of an organisation to file such separate petition, but, there could still not have been any forum hunting in the method and manner it has been done to create ripples in this Court, by indulging in this exercise of filing the second petition on the very next day, thereafter, mentioning it on the same day, for the member to exercise her right. Even the petitioner is member of organization CJAR is not relevant or material but the fact remains that similar identically worded petition has been filed by petitioner. It was not proper to request Court No.2 to take up the matter when the other matter filed by CJAR was coming up on Friday before another Bench. At the most the prayer could have been to list the said petition along with the matter filed by CJAR which was coming up for hearing on Friday, 10.11.2017 before Hon'ble Sikri, J.

18. Prayer has been made before us that Hon'ble Chief Justice of India should not have assigned the matter to 3-Judge Bench, and there was a judicial order of formation of Bench of 5 Judges in order of seniority which would include Hon'ble Chief Justice of India also. On the one hand, the judicial order included Hon'ble the Chief Justice of India to hear this matter on merits while, on the other hand, prayer is being made in the application filed today i.e. i.e. 13.11.2017 as well as by learned counsel appearing on behalf of the petitioner that Hon'ble the Chief Justice of India should neither hear the matter, nor assign it on the administrative side. There is a contradiction in the order passed by Court No.2 on 9.11.2017 and in their submission.

19. As a matter of fact, this controversy has been set at rest that even when there is an allegation against Hon'ble Chief Justice of India, it is he, who has to assign the case to a Bench, as considered appropriate by him. This has not only been settled by the Constitution Bench in CJAR (supra) vide aforesaid order dated 10.11.2017 but, this question also arose in the matter of Dr. D C Saxena v. Chief Justice of India (1996) 5 SCC 216, decided by a 3-Judge Bench of this Court wherein, the petitioner Dr. D C Saxena, filed a public interest litigation which was heard by Hon'ble Chief Justice of India and two other Judges. The then Chief Justice of India and the two other Judges summarily dismissed the petition which triggered the petitioner to file another petition; that got posted before a Bench of 3 Judges. Scandalous averments were made in the petition against the Hon'ble Chief Justice of India. The second writ petition was also dismissed and, thereafter, this Court issued a show cause notice after dismissing the writ petition as to why contempt proceedings should not be initiated against him, as the persistent contumacious conduct of the petitioner had been to scandalize the court. It was submitted by the petitioner that contempt could not be initiated as the

constitution of the Bench by the Chief Justice of India was in violation of principles of natural justice as no one can be a Judge in his own cause. The often cited proposition that, Justice should not only be done but should manifestly and undoubtedly seem to have been done, and that nothing is to be done which creates a suspicion that there has been improper interference in the course of justice, had been raised by the petitioner in an unsuccessful attempt to take refuge under these propositions for his conduct. In spite of the objection Hon'ble Chief Justice of India not to constitute a Bench, the Chief Justice of India chose to constitute a Bench, with the Hon'ble Chief Justice himself as the presiding Judge. According to the petitioner the order passed by the Bench of Hon'ble Chief Justice of India was required to be ignored. This Court has laid down that the assertion that the first writ petition was not dismissed in the eye of law, tends to question the authority of the court. This Court has observed thus :

> "51. It would, thus, be seen that when the first writ petition was dismissed by this Court, as a responsible citizen, the petitioner should have kept quiet. When the result animated by the petitioner was not achieved, he embittered to foul at the process of this Court and emboldened to file the second writ petition with imputation made against this Court, in particular targeting the Chief justice of india, Justice A.M. Ahmadi. As stated hereinbefore and need not be reiterated once over that it is the duty of the Court to hear and decide any matter posted for admission. Therefore, there is nothing improper for the first Court presided over by the Chief justice of india to hear and decide the matter. When it came up for admission, the Court appears to have been persuaded to ascertain the correctness of the allegations made in the writ petition. This Court obviously before issuing notice had sent for and directed the Solicitor General to obtain the information from the Government as to the correctness of the allegations made before deciding whether the Court would exercise its prerogative power under Article 32 to issue directions as sought for. In furtherance thereof, the Solicitor General admittedly placed before the Court the record. On perusal thereof, the first Court had declined to exercise the power as enumerated and obviously stated by the petitioner that the exercise of the power under Article 32 was not appropriate since the Government in the Defence Department could recover from the Prime Minister's Secretariat or from the Congress Party, as the case may be, all the arrears, if any, due and payable by the respective entities. It is not obligatory for this Court to give reasons for dismissing the writ petition. Day in and day out in countless cases, while refusing to interfere with the orders this Court dismisses the petitions be they filed under Article 32 or 136 of the Constitution in limine. It is also seen that though the case was adjourned for two weeks, no doubt, it was not posted on that day but it was listed sometime thereafter. In the proceedings of the Court recorded by the staff, it was recorded that the Solicitor General for India appeared in the Court in his official capacity. Shri Dipankar Gupta as Solicitor General or in personal capacity obviously acted as amicus on behalf of the Court. Being the Solicitor General for India, he was directed to have consultation with Government Departments and to obtain needed information. In appropriate cases this procedure is usually adopted by the Court. Recording of the proceedings by the Court generally is not noted by the Court. Is it

improper for the Chief Justice to hear the case? Was the dismissal totally unjust and unfair for not recording the reasons? The petitioner obviously with half-baked knowledge in law mixed up the language as "improper for Chief justice of india to hear it", "Dismissal of the 'grouse' of the petitioner was totally unjust, unfair, arbitrary and unlawful, flagrant violation of mandate of Article 14", "Violation of the sacred oath of office" and to "declare Justice A.M. Ahmadi unfit to hold the office as Chief justice of india". When these imputations were pointed out to the petitioner by a three-Judge Bench presided over by brother Verma, J. while dismissing the second writ petition, to be scandalous and reckless, he had stated that he "stood by" those allegations. He reiterated the same with justification in his preliminary submissions. He has stated that the accusations made were truthful and 'carefully' worded. In this backdrop scenario, the effect of these imputations is obviously reckless apart from scandalising this Court, in particular the Chief justice of india and was intended to foul the process of the Court or lower or at any rate tends to lower the authority of the Court in the estimate of the public and tends to undermine the efficacy of the judicial process. It would, therefore, be clear that the accusations are gross contempt. At the height of it, he stated that since the first writ petition was not disposed of by a Bench of not less than five Judges, the writ petition was not dismissed in the eye of law and the order of dismissal is non est and it is "not decided and disposed of constitutionally". This assertion of the petitioner flies in the face of the judicial finality of the order of this Court and the assertion tends to question the authority of the Court. It creates tendency to obstruct the administration of justice and, therefore, it would be an outrageous criminal contempt."

20. This Court also considered the allegation whether the Chief Justice could not constitute the Benches, where imputations were made against him; this was also held aggravate the contempt. This Court has laid down that when imputations were made against the Chief Justice, it is the prerogative of the Chief Justice to constitute the Benches and assign judicial business, and it would not hinge on the whim of the litigant. This Court has observed :

"26. When imputations were made against the Chief Justice, the petitioner assumed, in our view, "wrongly" that the CHIEF JUSTICE OF INDIA cannot constitute benches nor should he discharge the functions of Chief Justice until the matter is decided. On appointment by the President by a warrant and on his taking oath of office, the CHIEF JUSTICE OF INDIA becomes entitled to discharge the functions and duties of that office including constitution of benches and assignment of judicial work to judges as per procedure. This responsibility flows from the office and none including a litigant has right to demand for contra-position. As regards his personal disposition to hear a case by a bench of which he is a member, it is his own personal volition. The Chief Justice's prerogative to constitute benches and assignment of judicial business would not hinge on the whim of a litigant.

27. The decisions of different benches are the decisions of the Court.

For the convenient transaction of business, the senior Judge among the members composing the bench gets the privilege to preside over the bench but the decision is that of the Court. The members composing the bench collectively speak for the Court and would bear collective responsibility for the decision unless separate opinions are expressed by individual members composing the bench. Majority opinion is the law as envisaged under Article 145(5) of the Constitution. Their opinion or order thus is the opinion or order of the Court. The minority opinion also would form part of the judgment or order but remains the minority view. The Chief Justice is first among the colleagues." "52. Omission to record reasons, according to the petitioner, is violative of the principles of natural justice. The Chief justice of india has committed impropriety in deciding the matter. As stated earlier, the decision is that of the Bench on behalf of the Court and the Chief Justice, being the seniormost among the members constituting the Bench, had spoken on behalf of the Bench. Therefore, the attribution of improper motives scandalises the efficacy of judicial adjudication and per se contumaciously lowers or at any rate tends to lower the dignity or authority of the Court. The prayer for prosecution of the Chief Justice, though sought in Item 14(a) and (d) to be withdrawn, which would be of no consequence, is, therefore, unbelievably outrageous contempt.

61. Item 13 relates to the interference with the judicial management of the Court and the duty of a Judge. When an accusation is made against the presiding Judge, by implication, until the matter is decided, the Presiding Officer has to desist from discharging the judicial duties by his proceeding on leave and the seniormost puisne Judge would assume the office of the Chief Justice. This is a deliberate interference in the judicial management tending to sow disaffection in the efficacy of dispensation of justice. The further accusation that the Chief Justice of India should not constitute a Bench of the Judges appointed during his tenure so that "he (Chief Justice of India)" "may not directly or indirectly influence any of the Judges hearing the matter". It would, thus, be in unequivocal loud expression that the contemnor attributed motives to the Chief Justice of India that the Judges appointed during his tenure as Chief Justice are amenable to his influence in judicial adjudication and would decide the causes by pressure or influence directly or indirectly brought by the Chief Justice of India. Equally, it is a corollary that these Judges are amenable to influence and thereby they do not decide the cases posted before them legally and objectively. The Court is subject to pressures and decides cases under influence. These accusations are flagrantly outrageous to scandalise the Court. Though the contemnor has sought leave to modify this statement, ultimately, in his amended statement, he did not touch upon this aspect of the matter. In other words, as stated earlier, he stood by his averments calculatedly made. His justification that Justice P.N. Bhagwati (as he then was) decided first S.P. Gupta case when allegations against Chief Justice of India Chandrachud were made has no application. In a judicial proceedings taken by this Court, the office of the Chief Justice of India was directly involved in appointment of additional Judges or extension of their tenure as additional Judges or their transfer. The Chief Justice of India reclused himself from the Bench; resultantly, the senior most puisne Judge came to preside over that Bench. Thus, the contemnor has committed the contempt of this Court under Article 129 of the Constitution."

21. This Court has also laid down in Dr. D C Saxena (supra) that it was the duty of the Chief Justice to assign judicial work to brother Judges. By doing so, he did not become a Judge in his own cause. It is contempt to imply that the Chief Justice would assign it to a Bench which would not pass an order adverse to him. It is also contempt to imply that the Judges would be so amenable to comply

that the Bench which heard the second writ petition could not have heard it. This Court has laid down these allegations aimed at bringing the administration of justice in disrepute. This Court has observed :

> "81. It is the duty of the Chief Justice of a court to assign judicial work to his brother Judges. It was, therefore, the duty of the respondent to assign the second writ petition to a Bench to hear it. By doing so he did not, as is alleged, become a Judge in his own cause. It is contempt to imply, as the alleged contemnor does, that the respondent would assign it to a Bench which would not pass an order adverse to him. It is also contempt to imply that Judges would be so amenable. To plead that the Bench that heard the second writ petition could not have heard it and, therefore, could not have dismissed it and that it is deemed to be still pending is to add to the contempt. These allegations are also aimed at bringing the administration of justice into disrepute."

22. The submissions so raised, and averments so made, in this petition, and the entire scenario created by filing of two successive petitions, are really disturbing a lot. The entire judicial system has been unnecessarily brought into disrepute for no good cause whatsoever. It passes comprehension how it was, that the petitioner presumed, that there is an FIR lodged against any public functionary. There is an averment made in the writ petition that it is against the highest judicial functionaries; that FIR has been recorded. We do not find reflection of any name of the Judge of this Court in the FIR. There is no question of registering any FIR against any sitting Judge of the High Court or of this Court as it is not permissible as per the law laid down by a Constitution Bench of 5 Hon'ble Judges of this Court in the case of K. Veeraswami v. Union of India (1991) 3 SCC 655 wherein this Court observed that in order to ensure the independence of the judiciary the apprehension that the Executive being largest litigant, it is likely to misuse the power to prosecute the Judges. Any complaint against a Judge and investigation by the CBI if given publicity, will have a far reaching effect on the Judge and the litigant public. The need, therefore, is of judicious use of action taken under the Act. There cannot be registration of any FIR against a High Court Judge or Chief Justice of the High Court or the Supreme Court Judge without the consultation of the Hon'ble Chief Justice of India and, in case there is an allegation against Hon'ble Chief Justice of India, the decision has to be taken by the Hon'ble President, in accordance with the procedure prescribed in the said decision. Thus, the instant petitions, as filed, are a misconceived venture inasmuch, as the petition wrongly presupposes that investigation involves higher judiciary, i.e. this Court's functionaries are under the scanner in the aforesaid case; that independence of judiciary cannot be left at the mercy of the CBI or that of the police is a red herring. There cannot be any FIR even against the Civil Judge/Munsif without permission of the Chief Justice of the concerned court; and rightly, FIR has not been registered against any sitting Judge. Otherwise, on unfounded allegations, any honest Judge to the core, can be defamed, and reputation can be jeopardized. No Judge can be held responsible for what may, or has happened in the corridors, or for 'who purports to sell whom'. The alleged actions of a retired Judge of a High Court, allegedly assuring and promising, a 'favourable' decision in the aforesaid circumstances of the case which was then pending before this Court, in the aforesaid circumstances and has assured favourable orders, begs the question, and we wonder, as to what favourable orders have been passed. As is apparent from the aforesaid narration of facts, there was

no favourable order granted by this Court in favour of the medical college for the current academic session 2017-18, rather its inspection for considering confirmation of letter of permission for the next year 2018-19 had been ordered. The decision will be in the hands of the MCI. After decision has been rendered on 18.9.2017 by this Court, an FIR has been lodged and it appears that money was yet to be exchanged. The FIR dated 19.9.2017 reflects that Mr. B.P. Yadav, Justice Quddusi, Ms. Bhawana Pandey, and Mr. Sudhir Giri were likely to meet Mr. Biswanath Agarwala for getting favourable order at Delhi shortly; whereas this Court has already decided the mater on 18.9.2017. Thus it is a far fetched and too tenuous to even assume or allege that the matter was pending in this Court for which any bribe was to be delivered to anyone.

23. There is no conflict of interest in such a matter. In case Judge is hearing a matter and if he comes to know that any party is unscrupulously trying to influence the decision making or indulging in mal practices, it is incumbent upon the Judge to take cognizance of such a matter under Contempt of Courts Act and to deal with and punish such person in accordance with law as that is not the conflict of interest but the purpose for which the entire system exists. Such things cannot be ignored and recusal of a Judge cannot be asked on the ground of conflict of interest, it would be the saddest day for the judicial system of this country to ignore such aspects on the unfounded allegations and materials. It was highly improper for the petitioner to allege conflict of interest in the petition filed that the Hon'ble Chief Justice of India should not hear on judicial side or allocate the matter on the administrative side. It appears that in order to achieve this end the particular request has been made by filing successive petitions day after the other and prayer was made to avoid the Hon'ble Chief Justice of India to exercise the power for allocation of cases which was clearly an attempt at forum hunting and has to be deprecated in the strongest possible words. Making such scandalous remarks also tantamount to interfering with administration of justice, an advocate cannot escape the responsibility on the ground that he drafted the same in his/her personal capacity as laid down in Shamsher Singh Bedi v. High Court of Punjab & Haryana (1996) 7 SCC 99. In Charan Lal Sahu v. Union of India (1988) 3 SCC 255, this Court has observed that in a petition filed under Article 32 in the form of PIL attempt of mudslinging against the advocates, Supreme Court and also against the other constitutional institutions indulged in by an advocate in a careless manner, meaningless and as contradictory pleadings, clumsy allegations, contempt was ordered to be drawn. The Registry was directed not to entertain any PIL petition of the petitioner in future.

24. In R. K. Anand v. Delhi High Court (2009) 8 SCC 106, this Court observed that there could be ways in which conduct and action of malefactor was professional misconduct. The purity of the court proceedings has to be maintained. The Court does not only have the right but also an obligation to protect itself and can bar the malefactor from appearing before the Court for an appropriate period of time. There is a duty cast upon an Advocate to protect the dignity of this Court not to scandalize the very institution as observed in the said decision.

25. In Leila David v. State of Maharashtra (2009) 10 SCC 337 this Court observed that making of scandalous remarks against High Court Judges and seeking their punishment on the allegation of their being party to genocide petition was dismissed and incumbent was punished. Scandalous allegation cannot be made against the Judges as observed in Amrik Singh v. State (Delhi Admn.)

(1971) 3 SCC 215. In Bal Kishan Giri v. State of U.P. (2014) 7 SCC 280 this Court has observed that the allegation that the accused had the links with 3 Judges of the High Court who would favour in getting the bail, this Court held that such allegations are too serious, scandalous and admittedly sufficient to undermine the majesty of law and dignity of the court amounting to contempt. Plea by contemnor a practicing lawyer that he was misguided by another advocate is an afterthought. He must since have been fully aware of the consequence of allegations made by him. Sentence of simple imprisonment was imposed by the High Court and the same was confirmed by this Court. This Court has also observed that the power for contempt is a rule specified which by very nature calls for exercise with great care and caution and such power ought to be exercised only where silence is nothing but an option. The power to punish for contempt is to secure public respect and care for judicial process.

26. This Court considered various categories of forum shopping in Union of India & Ors. v. M/s. CIPLA Ltd. & Anr. (2017) 5 SCC 262. Even making allegations of a per se conflict of interest require the matter could be transferred to another Bench, has also been held to be another form of forum hunting. This Court has considered various decisions thus :

> "146. The learned Solicitor General submitted that Cipla was guilty of forum shopping inasmuch as it had filed petitions in the Bombay High Court, the Karnataka High Court and also an affidavit in the Delhi High Court as a member of the Bulk Drug Manufacturers Association and had eventually approached the Allahabad High Court for relief resulting in the impugned judgment and order dated 3-3-2004 1. It was submitted that since Cipla had approached several constitutional courts for relief, the proceedings initiated in the Allahabad High Court clearly amount to forum shopping.
>
> 147. We are not at all in agreement with the learned Solicitor General.

Forum shopping takes several hues and shades and Cipla's petitions do not fall under any category of forum shopping.

148. A classic example of forum shopping is when a litigant approaches one Court for relief but does not get the desired relief and then approaches another Court for the same relief. This occurred in Rajiv Bhatia v. Govt. (NCT of Delhi). The respondent mother of a young child had filed a petition for a writ of habeas corpus in the Rajasthan High Court and apparently did not get the required relief from that Court. She then filed a petition in the Delhi High Court also for a writ of habeas corpus and obtained the necessary relief. Notwithstanding this, this Court did not interfere with the order passed by the Delhi High Court for the reason that this Court ascertained the views of the child and found that she did not want to even talk to her adoptive parents and therefore the custody of the child granted by the Delhi High Court to the respondent mother was not interfered with. The decision of this Court is on its own facts, even though it is a classic case of forum shopping.

149. In Arathi Bandi v. Bandi Jagadrakshaka Rao this Court noted that jurisdiction in a court is not attracted by the operation or creation of fortuitous circumstances. In that case, circumstances were

created by one of the parties to the dispute to confer jurisdiction on a particular High Court. This was frowned upon by this Court by observing that to allow the assumption of jurisdiction in created circumstances would only result in encouraging forum shopping.

150. Another case of creating circumstances for the purposes of forum shopping was World Tanker Carrier Corpn. v. SNP Shipping Services (P) Ltd. wherein it was observed that the respondent/plaintiff had made a deliberate attempt to bring the cause of action, namely, a collision between two vessels on the high seas within the jurisdiction of the Bombay High Court. Bringing one of the vessels to Bombay in order to confer jurisdiction on the Bombay High Court had the character of forum shopping rather than anything else.

151. Another form of forum shopping is taking advantage of a view held by a particular High Court in contrast to a different view held by another High Court. In Ambica Industries v. CCE31 the assessee was from Lucknow. It challenged an order passed by the Customs, Excise and Service Tax Appellate Tribunal ("CESTAT") located in Delhi before the Delhi High Court. Cestat had jurisdiction over the State of Uttar Pradesh, NCT of Delhi and the State of Maharashtra. The Delhi High Court did not entertain the proceedings initiated by the assessee for want of territorial jurisdiction. Dismissing the assessee's appeal this Court gave the example of an assessee affected by an assessment order in Bombay invoking the jurisdiction of the Delhi High Court to take advantage of the law laid down by the Delhi High Court or an assessee affected by an order of assessment made at Bombay invoking the jurisdiction of the Allahabad High Court to take advantage of the law laid down by it and consequently evade the law laid down by the Bombay High Court. It was said that this could not be allowed and circumstances such as this would lead to some sort of judicial anarchy.

152. Yet another form of forum shopping was noticed in Jagmohan Bahl v. State (NCT of Delhi) wherein it was held that successive bail applications filed by a litigant ought to be heard by the same learned Judge, otherwise an unscrupulous litigant would go on filing bail applications before different Judges until a favourable order is obtained. Unless this practice was nipped in the bud, it would encourage unscrupulous litigants and encourage them to entertain the idea that they can indulge in forum shopping, which has no sanction in law and certainly no sanctity.

153. Another category of forum shopping is approaching different courts for the same relief by making a minor change in the prayer clause of the petition. In Udyami Evam Khadi Gramodyog Welfare Sanstha v. State of U.P. it was noticed by this Court that four writ applications were filed by a litigant and although the prayers were apparently different, the core issue in each petition centred round the recovery of the amount advanced by the bank. Similarly, substituting some petitioners for others with a view to confer jurisdiction on a particular court would also amount to forum shopping by that group of petitioners.

154. Finally and more recently, in Supreme Court Advocates-on-Record Assn. v. Union of India (Recusal Matter) Khehar, J. noticed yet another form of forum shopping where a litigant makes allegations of a perceived conflict of interest against a Judge requiring the Judge to recuse from the proceedings so that the matter could be transferred to another Judge.

155. The decisions referred to clearly lay down the principle that the Court is required to adopt a functional test vis-à-vis the litigation and the litigant. What has to be seen is whether there is any functional similarity in the proceedings between one court and another or whether there is some sort of subterfuge on the part of a litigant. It is this functional test that will determine whether a litigant is indulging in forum shopping or not."

27. In view of the aforesaid it is clear that the submission raised that Hon'ble Chief Justice of India should not hear the matter or should not assign it on administrative side is highly improper. In our opinion there was no impropriety in assigning this matter to this Bench rather it was a constitutional imperative as per the mandate of the 5 Judge Bench, Supreme Court Rules, 2013 as well as the decision in Dr. D C Saxena (supra). It was an attempt of choosing a forum by submitting that Hon'ble Chief Justice of India should not have formed the Bench. Even Court No.2 in its order dated 9.11.2017 did not exclude Hon'ble Chief Justice of India from hearing the matter.

28. Yet another disturbing feature which aggravates the situation is that prayer has been made, that one of us, Justice A. M. Khanwilkar, should recuse from the matter. This is nothing but another attempt of forum hunting which cannot be permitted. Rather this kind of prayer was held to be contemptuous, aggravating the contempt in the case of Dr. D C Saxena (supra). This is yet another strategy to succeed in the attempt that the Hon'ble CJI should not take up the matter himself in the judicial side and administrative side for what may apply to and hold good for one of us will be equally applicable to Hon'ble CJI. Though it was submitted that there is no allegation against Justice A. M. Khanwilkar but since he decided the matter of medical college with respect to which FIR has been lodged, he should recuse. In our opinion, rather it is the duty of the Bench to take up such matter firmly; such unscrupulous allegations and insinuations cannot be allowed to be hurled by oral prayer made on behalf of the petitioner for recusal. This is simply deprecated and we find that it is another attempt to bring the system in disrepute, casting of unwarranted aspersions tantamounts to seriously jeopardizing the independence of the judiciary.

29. Though it is true, that none of us is above law; no person in the higher echelons is above the law but, at the same time, it is the duty of both the Bar and the Bench, to protect the dignity of the entire judicial system. We find that filing of such petitions and the zest, with which it is pursued, has brought the entire system in the last few days to unrest. An effort was made to create ripples in this Court; serious and unwanted shadow of doubt has been created for no good reason whatsoever by way of filing the petition which was wholly scandalous and ought not to have been filed in such a method and manner. It is against the settled proposition of law. Ultimately after arguing at length, at the end, it was submitted by the petitioner and her counsel that they were not aiming at any individual. If that was not so, unfounded allegations ought not to have been made against the system and that too against the Hon'ble Chief Justice of this country. In case majesty of our judicial system has to survive, such kind of petitions should not have been preferred that too against the settled proposition of law laid down by this Court in the aforesaid decisions of this Court in Dr. D C Saxena (supra) and K. Veeraswami (supra).

30. Submission was also made that unprecedented hearing was done on Friday by a Constitution Bench of this Court. It was a fait accompli and circumstances compelled hearing on 10.11.2017 as on

Thursday in this case, order was passed bypassing the power of Hon'ble Chief Justice of India to constitute a 5-Judge Bench in order of seniority including the Hon'ble Chief Justice of India. It was not permissible as held by this Court in CJAR and hearing of the instant matter was scheduled for Monday, i.e. 13.11.2017, and Friday was the only day available on which the law was required to be settled otherwise judicial order was binding and it was necessary to decide the question as other Bench had requested the Hon'ble Chief Justice of India to assign this matter to an appropriate Bench. As Hon'ble Chief Justice of India had to assign it to a Bench, situation of dilemma was created for Hon'ble Chief Justice of India whether to assign the matter of CJAR to an appropriate Bench or to go by the judicial order by constituting a Bench of 5 senior Judges on 13.11.2017. Thus as per the judicial order matter was required to be heard on Monday i.e. 13.11.2017. No other working day was intervening on which this issue was required to be settled. Thus a Constitution Bench was required to be constituted on the day which was available for deciding the issue so as to decide the issue whether by judicial order case can be assigned to a particular Bench or it is in ambit of power of Hon'ble Chief Justice of India to assign the case. As that issue has been settled by the Constitution Bench decision relying on an earlier decision in the case of Prakash Chand (supra), roster making is the prerogative of Hon'ble Chief Justice of India was laid down in the case of Prakash Chand (supra). Besides the Supreme Court Rules, 2013 also provides that the Hon'ble Chief Justice of India has to assign the case. The cases cannot be assigned by judicial order. Such judicial order is simply to be ignored as it is not open to the Judges to decide which matter is to be heard by whom as laid down by Constitution Bench. Prayer made that the decision of the Constitution Bench is to be ignored by us, is wholly unfounded and we must go by the order of the Division Bench passed on 9.11.2017 and we should refer the matter to 5 seniormost Judges is preposterous that would include the Hon'ble Chief Justice of India also. The prayer is per se very contradictory in its nature and has no legs to stand. Let the good sense prevail over the legal fraternity and amends be made as lot of uncalled for damage has been made to the great Institution in which public reposes their faith. We deprecate the conduct of forum hunting that too involving senior lawyer of this Court. Such conduct tantamounts wholly unethical, unwarranted and nothing but forum hunting, as discussed by this Court in the case of Cipla (supra) .

31. On behalf of the petitioner for recusal of Hon'ble A M Khanwilkar, J., reliance has been placed on the decision in Ranjit Thakur v. Union of India & Ors. (1987) 4 SCC 611 in which it has been laid down that reasonableness of the apprehension or bias in the mind of the party has to be seen. We find that there is no room for the petitioner to infer the bias. There is no reasonable basis to pray for recusal of Hon'ble A.M.Khanwilkar, J. In our opinion that tantamount to contempt of court and an attempt at forum hunting. Reference has also been made to the decision in Supreme Court Advocates on Record Association v. Union of India (2016) 5 SCC 808 in which maxim nemo judex in causa sua has been considered, that no man is to be judge in his own cause, should be held sacred and that maxim is not to be confined to a case in which he is a party but applies to a cause in which he has an interest. It is far fetched and too tenuous to submit that any Judge of this Court much less Hon'ble A.M. Khanwilkar, J. has any interest in the subject matter and for that reason in spite of there being no allegation in the writ petition, Shri Justice A. M. Khanwilkar should recuse. There is no room for reasonable suspicion even in remote and argument is simply too derogatory to be made, probably that has been made anyhow or somehow to protect the case and to bring disrepute to this Court. We cannot fall prey to such unscrupulous devices adopted by the litigants, so as to choose the

Benches, as that is a real threat to very existence of the system itself and it would be denigrated in case we succumb to such pressure tactics.

32. The petition is liable to be dismissed and is hereby dismissed.

……J.
(R.K. Agrawal)

……J.
(Arun Mishra)

New Delhi;
November 14, 2017.

……..J.
(A.M. Khanwilkar)