

## **“Is this a selection or an election?”, asks Ms. Jaising**

On Thursday, 10<sup>th</sup> August, 2017 a three-judge bench in the Supreme Court of India comprising of Justices Ranjan Gogoi, R.F. Nariman and Navin Sinha heard arguments in the ongoing matter titled '**Indira Jaising v. Supreme Court of India (through the Secretary General) & Ors.**' which is a petition filed in public interest by Ms. Indira Jaising, a Senior Advocate who is seeking for court's guidelines to prevent monopolistic practices and to bring transparency in the process of designating a senior. This was done after the Supreme Court's decision on January 2, 2017 to hear afresh the plea as some lawyers had approached the court for intervening in this case and had stated that not all have been given a proper hearing on the issue of senior designations.

Ms. Indira Jaising who argued in-person commenced by stating even though Section 16 of the Advocates Act, 1961 gives power to the court to designate an applicant advocate by virtue of his/ her '**ability, standing at the Bar or special knowledge or experience in law**', there are no parameters laid out in law to assess these virtues. Hence, a need arises that the process be conducted in a non-arbitrary manner. She suggested that it is merit of an applicant which must be taken into consideration for designating a senior.

Ms. Jaising further said that the lawmaker's intention is quite clear to recognise even those advocates as seniors who have domain expertise because law was amended to include '*experience and standing at*

*the Bar or special knowledge or experience in law* when compared to *'experience and standing at the Bar'* only in the earlier provision. She argued that the court's satisfaction for designation must be based on objective materials rather than on subjective satisfaction of the court alone. The process is flawed since there is no format or requirement of materials or disclosures at the time of application, which can substantially influence the acceptance or rejection of designation

She stated that designation is a conferment of status on an advocate having regard to his standing or expertise in the legal profession and hence this recognition (or honour or rank or status) is granted in public interest to ensure the availability of competent legal services to the litigants and to ensure objective assistance to the court. She further distinguished the recognition of senior designation from that of a title, a suffix or a pre-fix. She also pointed out that this recognition however should not be discriminatory in nature for non-designated persons to create a distinction in the manner and mode of dress between the seniors and juniors. She said that since there is no rule or regulation of the Bar Association which provides for distinct gowns between the seniors and juniors hence this practice should be disused for being discriminatory.

Relying upon practices adopted in various common wealth countries, such as England and Wales, Nigeria, Australia, Singapore and Ireland, she discussed at length how these systems of senior designation can be applied in India. She particularly recommended the Court to adopt the system of

Nigeria which has laid down exhaustive guidelines for conferring the Senior Designation rank. These guidelines lay criteria for eligibility and competence with two filters of applications after which all candidates are notified of the decision. They also conduct a physical examination of the applicant seeking designation to evaluate quality of library, maintenance of proper books of accounts, number of juniors mentored etc. Most importantly, their method of evaluating competence is based on a weighed criterion which includes: integrity, opinion of judges, general knowledge of law, contribution to the development of law, leadership qualities, strength of the reference received, quality of law office/ library.

She suggested her own 100-point criteria for the court's consideration which included number of years of practice, public interest lawyering, number of reported judgments, quality publications, other contributions to the public affairs etc. She opposed the current evaluation method which is a subjective method which is based on the perspective of the judges formed when an advocate is arguing in his/her court. She said that such appearance in court mostly depends on the specialised nature of the practice of the advocate as they do not necessarily know every judge of every court. She pointed that in such circumstances the procedure of decision by secret ballot is highly inappropriate and judges should disqualify themselves if he or she is unaware of the antecedents of the applicants. She argued the process must be to convert election to selection as the system of secret ballot was created in response to concerns over bullying tactics used to disrupt election results. She said that this is not applicable in senior designations as

judges have no occasion to fear intimidation or retaliation with regard to their vote while designating a senior advocate. She said that anyone found lobbying should also be disqualified.

Ms. Jaising further relied on a Bar and Bench Survey, conducted in 2016, where it was found that 75% of the survey participants felt that designations are discriminatory and based on political ideology and 74% felt that discrimination was based on social status, gender, caste and religion. She then reiterated the need for designation of senior counsels to be based on objective criteria of merit and proper guidelines in place.

After that Mr. KK Venugopal who is assisting the court began with his submissions stating that a senior advocate when compared with a non-senior advocate occupies a higher footing by virtue of his knowledge and experience and is likely to put across a case much better than a non-senior. He however stated that there can be exceptions to this. He said that court should be very circumspect when awarding such designations as it certifies that a person who is being conferred gown will be able to perform his duties better and hence only meritorious persons with high standing should be designated. To support his argument, he referred to the Bar Council of India Rules which place restrictions on senior advocates such as he cannot file a Vakalatnama before any Court, he cannot appear without an AOR or a junior advocate, etc.

Mr. Venugopal further said that success alone cannot be a criterion for designating lawyers as seniors, integrity and conduct especially in court should also be considered. This is because some successful lawyers have misled the court or suppressed relevant facts which should have been disclosed and hence such persons will not be able to uphold the integrity of the profession.

The hearing remained part-heard and the remaining arguments will now take place on 29<sup>th</sup> August, 2017.

Link to Ms. Jaising's written submissions:

<http://www.lawyerscollective.org/updates/written-submission-matter-indira-jaising-v-supreme-court-india>

***Indira Jaising is assisted by Advocate Ajita Sharma, Radhika Saxena and Anindita Pujari in this matter.***