

# 115. THE NATIONAL JUDICIAL APPOINTMENTS COMMISSION ACT, 2014<sup>1</sup>

[No. 40 of 2014]

[31st December, 2014]

*An Act to regulate the procedure to be followed by the National Judicial Appointments Commission for recommending persons for appointment as the Chief Justice of India and other Judges of the Supreme Court and Chief Justices and other Judges of High Courts and for their transfers and for matters connected therewith or incidental thereto*

Be it enacted by Parliament in the Sixty-fifth Year of the Republic of India as follows—

**1. Short title and commencement.**—(1) This Act may be called the National Judicial Appointments Commission Act, 2014.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

**2. Definitions.**—In this Act, unless the context otherwise requires,—

- (a) "Chairperson" means the Chairperson of the Commission;
- (b) "Commission" means the National Judicial Appointments Commission referred to in Article 124-A of the Constitution;
- (c) "High Court" means the High Court in respect of which recommendation for appointment of a Judge is proposed to be made by the Commission;
- (d) "Member" means a Member of the Commission and includes its Chairperson;
- (e) "prescribed" means prescribed by the rules made under this Act;
- (f) "regulations" means the regulations made by the Commission under this Act.

**3. Headquarters of Commission.**—The Headquarters of the Commission shall be at Delhi.

**4. Reference to Commission for filling up of vacancies.**—The Central Government shall, within a period of thirty days from the date of coming into force of this Act, intimate the vacancies existing in the posts of Judges in the Supreme Court and in a High Court to the Commission for making its recommendations to fill up such vacancies.

(2) The Central Government shall, six months prior to the date of occurrence of any vacancy by reason of completion, of the term of Judge of the Supreme Court or of a High Court, make a reference to the Commission for making its recommendation to fill up such vacancy.

(3) The Central Government shall, within a period of thirty days from the date of occurrence of any vacancy by reason of death or resignation of a

1. Received the assent of the President on December 31, 2014 and published in the Gazette of India, Extra., Part II, Section 1, dated 31st December, 2014, pp. 1-5. No. 48.



Judge of the Supreme Court or of a High Court make a reference to the Commission for making its recommendations to fill up such vacancy.

**5. Procedure for selection of Judge of Supreme Court.**—(1) The Commission shall recommend for appointment the senior-most Judge of the Supreme Court as the Chief Justice of India if he is considered fit to hold the office :

Provided that, a member of the Commission whose name is being considered for recommendation shall not participate in the meeting.

(2) The Commission shall, on the basis of ability, merit and any other criteria of suitability as may be specified by regulations, recommend the name for appointment as a Judge of the Supreme Court from amongst persons who are eligible to be appointed as such under clause (3) of Article 124 of the Constitution :

Provided that, while making recommendation for appointment of a High Court Judge, apart from seniority, the ability and merit of such Judge shall be considered :

Provided further that, the Commission shall not recommend a person for appointment if any two members of the Commission do not agree for such recommendation.

(3) The Commission may, by regulations, specify such other procedure and conditions for selection and appointment of a Judge of the Supreme Court as it may consider necessary.

#### NOTE

**Consideration of Judges on basis of their seniority.**—Insofar as Section 5(2) of the NJAC Act is concerned, there cannot be any doubt, that consideration of Judges on the basis of their seniority, by treating the same as a primary consideration, would adversely affect the present convention of ensuring representation from as many States High Courts, as is possible. The convention in vogue is, to maintain regional representation. The first proviso under Section 5(2) is liable to be struck down and set aside. Section 6(1) applies to appointment of a Judge of a High Court as Chief Justice of a High Court. It has the same seniority connotation as has been expressed hereinabove, with reference to the first proviso under Section 5(2). For exactly the same reasons as have been noticed above, based on seniority (as a primary consideration), ten High Courts in different States could have Chief Justices drawn from one parent High Court. Section 6(1) of the NJAC Act was therefore liable to meet the same fate, as the first proviso under Section 5(2). [*Supreme Court Advocates-on-Record Association v. Union of India*, AIR 2015 SC (Supp) 2463].

**6. Procedure for selection of Judge of High Court.**—(1) The Commission shall recommend for appointment a Judge of a High Court to be the Chief Justice of a High Court on the basis of *inter se* seniority of High Court Judges and ability, merit and any other criteria of suitability as may be specified by regulations.

(2) The Commission shall seek nomination from the Chief Justice of the concerned High Court for the purpose of recommending for appointment a person to be a Judge of that High Court.

(3) The Commission shall also on the basis of ability, merit and any other criteria of suitability as may be specified by regulations, nominate name for appointment as a Judge of a High Court from amongst persons who are eligible



to be appointed as such under clause (2) of Article 217 of the Constitution and forward such names to the Chief Justice of the concerned High Court for its views.

(4) Before making any nomination under sub-section (2) or giving its views under sub-section (3), the Chief Justice of the concerned High Court shall consult two senior-most Judges of that High Court and such other Judges and eminent advocates of that High Court as may be specified by regulations.

(5) After receiving views and nomination under sub-sections (2) and (3), the Commission may recommend for appointment the person who is found suitable on the basis of ability, merit and any other criteria of suitability as may be specified by regulations.

(6) The Commission shall not recommend a person for appointment under this section if any two members of the Commission do not agree for such recommendation.

(7) The Commission shall elicit in writing the views of the Governor and the Chief Minister of the State concerned before making such recommendation in such manner as may be specified by regulations.

(8) The Commission may, by regulations, specify such other procedure and conditions for selection and appointment of a Chief Justice of a High Court and a Judge of a High Court as it may consider necessary.

### NOTES

**Process of appointment of Judge of High Court.**—The combined effect of the 99th Constitution Amendment Act and Section 6 of the NJAC Act is that the entire control over the appointment of a judge of a High Court is taken over by the NJAC and the paradigm is completely altered with the Chief Justice of a High Court downgraded from a mandatory consultant, and the originator of a recommendation for appointment as postulated by Article 217(1) of the Constitution as conventionally understood, to someone who merely makes a nomination and thereafter is not required to be consulted one way or the other with respect to the nomination made. This drastic change in the process of appointment of a Judge of a High Court obviously has a very long- term impact since it is ultimately from the 'cadre' of High Court judges that most Supreme Court judges would be appointed, if the existing practice is followed. [*Supreme Court Advocates-on- Record Association v. Union of India*, AIR 2015 SC (Supp) 2463].

**Recommendation for appointment of Judge of High Court.**—In terms of Section 6(2) of the NJAC Act, the recommendation for the appointment of a judge of a High Court cannot originate from the Chief Justice of the High Court but the NJAC will seek a nomination for that purpose from the Chief Justice of the High Court. In other words, the initiative for the appointment of a Judge of the High Court is wrested from the Chief Justice of the High Court by the NJAC. There is a qualitative difference between the Chief Justice of a High Court nominating a person for appointment as a judge of a High Court on the initiative of the NJAC (Section 6(2) of the NJAC Act) and the Chief Justice of a High Court recommending a person for appointment as a judge of a High Court. [Article 217(1) of the Constitution]. [*Supreme Court Advocates-on-Record Association v. Union of India*, AIR 2015 SC (Supp) 2463].

**7. Power of President to require reconsideration.**—The President shall, on the recommendations made by the Commission, appoint the Chief Justice of India or a Judge of the Supreme Court or, as the case may be, the Chief Justice of a High Court or the Judge of a High Court :



Provided that, the President may, if considers necessary, require the Commission to reconsider, either generally or otherwise, the recommendation made by it :

Provided further that, if the Commission makes a recommendation after reconsideration in accordance with the provisions contained in Sections 5 or 6, the President shall make the appointment accordingly.

**8. Officers and employees of Commission.**—(1) The Central Government may, in consultation with the Commission, appoint such number of officers and other employees for the discharge of functions of the Commission under this Act.

(2) The terms and other conditions of service of officers and other employees of the Commission appointed under sub-section (1) shall be such as may be prescribed.

(3) The Convenor of the Commission shall be the Secretary to the Government of India in the Department of Justice.

**9. Procedure for transfer of Judges.**—The Commission shall recommend for transfer of Chief Justices and other Judges of High Courts from one High Court to any other High Court, and for this purpose, specify, by regulations, the procedure for such transfer.

**10. Procedure to be followed by Commission in discharge of its functions.**—(1) The Commission shall have the power to specify, by regulations, the procedure for the discharge of its functions.

(2) The Commission shall meet at such time and place as the Chairperson may direct and observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at its meeting), as it may specify by regulations.

**11. Power to make rules.**—(1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely—

- (a) the fees and allowances payable to the eminent persons nominated under sub-clause (d) of clause (1) of Article 124-A of the Constitution;
- (b) the terms and other conditions of service of officers and other employees of the Commission under sub-section (2) of Section 8;
- (c) any other matter which is to be, or may be, prescribed, in respect of which provision is to be made by the rules.

**12. Power to make regulations.**—(1) The Commission may, by notification in the Official Gazette, make regulations consistent with this Act, and the rules made thereunder, to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely—

- (a) the criteria of suitability with respect to appointment of a Judge of the Supreme Court under sub-section (2) of Section 5;



- (b) other procedure and conditions for selection and appointment of a Judge of the Supreme Court under sub-section (3) of Section 5;
- (c) the criteria of suitability with respect to appointment of a Judge of the High Court under sub-section (3) of Section 6;
- (d) other Judges and eminent advocates who may be consulted by the Chief Justice under sub-section (4) of Section 6;
- (e) the manner of eliciting views of the Governor and the Chief Minister under sub-section (7) of Section 6;
- (f) other procedure and conditions for selection and appointment of a Judge of the High Court under sub-section (8) of Section 6;
- (g) the procedure for transfer of Chief Justices or other Judges from one High Court to any other High Court under Section 9;
- (h) the procedure to be followed by the Commission in the discharge of its functions under sub-section (1) of Section 10;
- (i) the rules of procedure in regard to the transaction of business at the meetings of Commission, including the quorum at its meeting, under sub-section (2) of Section 10;
- (j) any other matter which is required to be, or may be, specified by regulations or in respect of which provision is to be made by regulations.

**13. Rules and regulations to be laid before Parliament.**—Every rule and regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

**14. Power to remove difficulties.**—(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, after consultation with the Commission, by an order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty :

Provided that, no such order shall be made after the expiry of a period of five years from the date of commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

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