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To,
Justice K. Balakrishnan
The Chief Justice of India
Supreme Court
New Delhi

20/3/07

Subject: Proposed appointment of Justice Bhalla as Chief Justice of the Kerala High Court

Dear Chief Justice,

The Committee on Judicial Accountability had earlier written to the then Chief Justice Sabharwal seeking an independent investigation into the purchase of land in Noida by the wife of Justice Bhalla of Lucknow. The land which was purchased for Rs. 5 lacs was said to be worth 7 Crores by the SDM and ADM of Noida who had looked into the matter.

However despite this, and without any proper investigation into the matter, he was recommended to be appointed as Chief Justice of Kerala. We however understand that the government thereafter ordered an IB inquiry into the matter which gave an adverse report against Justice Bhalla. We understand that on this basis the recommendation was returned by the President and the government for reconsideration of the matter. We understand that the matter is now with the Collegium of the Supreme Court.

You must be aware that in the second and third Judges cases, the Supreme Court has laid down that while making his recommendation regarding the Transfer/ appointment of judges the Chief Justice must not only consult the other judges forming the collegium, but also those judges of the Supreme Court who had been in the parent High Court of the Judge in question. Thus in the words of the Court in Special Reference No. 1 (1998 (7) SCC 739:

“37. It is to our mind imperative, given the gravity involved in transferring High Court judges, that the Chief Justice of India should obtain the views of the Chief Justice of the High Court from which the proposed transfer is to be effected as also the the Chief Justice of the High Court to which the transfer is to be effected. This is in accord with the majority judgement in the Second Judges case which postulates consultation with the Chief Justice of another High Court. The Chief justice of India should also take into account the views of one or more Supreme Court judges who are in a position to provide material which would assist in the process of deciding whether or not a proposed transfer should take place. These views should be expressed in writing and should be considered by the Chief Justice of India and the four seniormost puisne judges of the Supreme Court.

These views and those of the four seniormost puisne judges should be conveyed to the government of India along with the proposal of transfer. Unless the decision to transfer has been taken in the manner aforesaid, it is not decisive and does not bind the government of India. “

Further in the operative directions issued by the court in Para 44, it is stated that:
“5. The requirement of consultation by the Chief Justice of India with his colleagues who are likely to be conversant with the affairs of the High Court concerned does not refer only to those judges who have that High Court as a parent High Court. It does not exclude Judges who have occupied the office of a judge or Chief Justice of that High Court on transfer”.

We understand that when the initial recommendation was made for appointment of Justice Bhalla as Chief Justice of Kerala, some of the judges who are from the Allahabad High Court were not consulted. At least they must now be consulted and their views ascertained in writing as required by the 2nd and 3rd judges cases.

Some senior members of the Committee on Judicial Accountability would like to personally meet you to discuss this matter. We understand that some lawyers from Lucknow had met you to discuss this matter on behalf of Justice Bhalla. We therefore request you to give us an appointment as soon as possible at your convenience.

With warm regards,

Sincerely,

SD/-

(SHANTI BHUSHAN)