[2025] 5 S.C.R. 1933 : 2025 INSC 667

Jitender @ Kalla
v.
State (Govt. of NCT of Delhi) and Anr.

(Criminal Appeal No. 865 of 2025)

13 May 2025

[Abhay S. Oka,* Ujjal Bhuyan and S.V.N. Bhatti, JJ.]

Issue for Consideration

(a) Whether the 100-point assessment laid down in *Indira Jaising v. Supreme Court of India (2017) 9 SCC 766* and modified in *Indira Indira Jaising v. Supreme Court of India (2023) 8 SCC 1* for the designation of Senior Advocates require reconsideration in light of the experience gained and concerns expressed.

(b) Whether the inclusion of members of the Bar in the Permanent Committee for designation is legally permissible under Section 16(2) of the Advocates Act, 1961, which confers the power of designation exclusively on the Supreme Court and High Courts.

(c) Whether advocates practising in trial courts, district courts, and specialized tribunals—who may not have reported judgments but possess ability, standing, and experience—should also be considered for designation, so that designation is not monopolised by advocates practicing in High Courts and the Supreme Court.

(d) Whether the practice of inviting applications from advocates for designation is warranted under the scheme of Section 16(2), or whether designation should only be by conferment by the Court with the advocate's consent.

Headnotes†

Advocates Act, 1961 – Designation of Senior Advocates – 100-point based assessment as provided in the *Indira Jaising (2017) and Indira Jaising* (2023) – Whether the scheme has achieved its desired objectives:

Held: The directions contained in paragraph 73.7 of *Indira Jaising v. Supreme Court of India (2017) 9 SCC 766* as amended by *Indira Jaising v. Supreme Court of India (2023) 8 SCC 1*, shall not be implemented – The system of a 100-point-based assessment is not

* Author

workable and has not achieved the desired objectives, as it tends to be highly subjective and is not rationally or objectively possible to assess an advocate's calibre and standing. [Paras 60, 75]

Advocates Act, 1961 – Interview/Interaction and participation of members of the Bar – Whether fair and legally permissible:

Held: Subjecting an advocate with standing at the Bar to an interview violates the dignity of the profession – The two members of the Bar who are a part of the permanent committee will have to interact with the applicants – The applicants will be their colleagues by profession – The two members of the Bar are expected to be of very high standing nevertheless, all the applicants have access to them – The participation of two senior members of the Bar in the actual decision-making process of the permanent committee cannot be supported by law, as Section 16(2) of the Advocates Act confers this prerogative on the Supreme Court and High Courts. [Paras 64, 70]

Advocates Act, 1961 – Inclusivity and Diversity – Role of advocates practicing in Trial and District Courts – Whether they should be considered for designation:

Held: Designation of Senior Advocates cannot be a monopoly of advocates practicing in higher constitutional courts like the Supreme Court and High Courts – Advocates practicing in trial and district courts or specialized tribunals can possess the qualifications for designation, and their role is not inferior to the role played by advocates practicing in High Courts and the Supreme Court – All High Courts are directed to frame new rules within a period of four months, which must ensure inclusivity by evolving a mechanism to consider advocates practicing in the Trial and District Judiciary. [Paras 78, 79, 84]

Advocates Act, 1961 – Procedure for designation – Applications and recommendations – Whether applications are warranted or individual judges can recommend candidates:

Held: The practice of advocates making formal applications for designation can be continued, as it has practical advantages and is treated as their consent for being considered – However, the Full Court can consider and confer designation on a deserving advocate even in the absence of an application after obtaining his/her consent – Individual judges of the Supreme Court or High

Courts cannot recommend candidates for designation, as the decision is a collective one for the Full Court. [Para 77]

Case Law Cited

Indira Jaising v. Supreme Court of India **[2017] 10 SCR 478 : (2017) 9 SCC 766;** *Indira Jaising v. Supreme Court of India* **[2023] 5 SCR 434 : (2023) 8 SCC 1;** *Amar Vivek Aggarwal v. High Court of Punjab & Haryana* **(2022) 7 SCC 439;** *E.S. Reddy v. Chief Secretary, Govt. of Andhra Pradesh* **[1987] 3 SCR 146 : (1987) 3 SCC 258 – referred to.**

List of Acts

Advocates Act, 1961; Constitution of India.

List of Keywords

Senior Advocate; Designation; Standing at the Bar; Ability; Special knowledge of law; Interview; Point-based assessment; Permanent Committee; Full Court; Secret ballot; Trial Courts.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 865 of 2025

From the Judgment and Order dated 08.01.2024 of the High Court of Delhi at New Delhi in WPCRL No. 72 of 2024

With

Writ Petition (Civil) No. 454 of 2015 and Interlocutory Application No. 36111 of 2023 in Miscellaneous Application No. 262 of 2023 in Writ Petition (Civil) 454 of 2015 and Interlocutory Application No. 45959 of 2022

Appearances for Parties

Advs. for the Appellant:
Tushar Mehta, Solicitor General, Dr. Anindita Pujari, Mohan v. Katarki, Aruneshwar Gupta, Nachiketa Joshi, Sr. Advs., Rajesh Ranjan, Ms. Shraddha Deshmukh, Kanu Agarwal, Digvijay Dam, Chitvan Singhal, Raman Yadav, Rajeshwari Shankar, Arvind Kumar Sharma, Ms. Indira Jaising, Paras Nath Singh, Shaileshwar Yadav, Rohit Kumar, Shailendra Singh, Sandeep Goyal, Ashish Pandey,

Jaydip Pati, Ms. Nina Nariman, Ms. Geetika Kapur, Malak Manish Bhatt, Ms. Samridhi, Ms. Ensha Chhabra, Ms. Saumya Raj, Rajat Sehgal, Manish Raghav, Kumar Kartikey, Ms. Neelu Sharma, Sumit Saddi, Kartik Hooda, Himanshu Singh Dhillon, Anirudh Kaushi, Vivek Sharma, Milind Kumar, Rajiv Kataria, For M/S. Delhi Law Chambers, A.P. Dhamija, Ms. Tanya Sharma, Ms. Bharti Tyagi, Devvrat, Ms. Harshita Sharma, Shivam Singh, Devesh Kumar Agnihotri, Dr. M.V.K. Moorthy, M. Kumar, Ms. Laxmi, Hitendra Nath Rath.

Advs. for the Respondents:
Tushar Mehta, Solicitor General, Gaurav Pachnanda, Dr. Anindita Pujari, Mohan V Katarki, P.S. Patwalia, Ajit Sinha, Shailesh Madiyal, P.S. Patwalia, Ajit Sinha, Sunil Kumar, Sr. Advs., Mukesh Kumar Maroria, Annam Venkatesh, Zoheb Hussain, Vivek Gurnani, Mrs. Astha Singh, Bhuvan Kapoor, Digvijay Dam, Pranav Sachdeva, Jatin Bhardwaj, Abhay Nair, P Rohit Ram, Vipin Nair, Ms. Sharmila Upadhyay, Sarvjit Pratap Singh, Sahil Tagotra, Ms. Shreya Bansal, Ms. Nikita Jaitly, Sujay Jain, Paras Nath Singh, Shaileshwar Yadav, Rohit Kumar, Shailendra Singh, Adarsh Mishra, Sandeep Goyal, Ujjawal Gaur, Harshvardhan Vishen Mall, Ravi Raghunath, Prateek K Chadha, Ahanthem Henry, Ahanthem Rohen Singh, David Ahongsangbam, Mohan Singh, Aniket Rajput, Ms. Khoisnam Nirmala Devi, Kumar Mihir, Ashok Mathur, Ms. Deveshi Chand, Ms. Divija Mahajan, Korada Pramod Kumar, Ankolekar Gurudatta, Varun Thakur, Ramkaran, Umesh Babu Chaurasiya, Anilendra Pandey, Kunal Chatterji, Ms. Maitrayee Banerjee, Rohit Bansal, R.S. Kamvani, Sanjiv Kumar Jain, Ms. Kavya S. Lokande, Ms. Madhvi S. Sawant, Jitender Kumar, Amitabh Pandey, Merusagar Samantaray, Ashok Mathur, Ms. Deveshi Chand, Anandh Kannan N., Ardhendumauli Kumar Prasad, Mrs. Nandini Gore, Prashant Singh, Mrs. Yugandhara Pawar Jha, Tuhin, Ms. Radhika Gautam, Pai Amit, Ms. Pankhuri Bhardwaj, Abhiyudaya Vats, Tathagata Dutta, Anirudh Sanganeria, Ms. Mayuri Raghuvanshi, Avinash Sharma, Ms. Udita Singh.

Advs. for the Intervenor:
Mathews Nedumpara, Ms. Hemali Kurna, Umesh Babu Chaurasia, Vipin Nair, Amit Sharma, Nikhil Jain, Kaustav Shukla, Mohd. Aman Alam, Aditya Narendranath, Mrs. M.B. Ramya, Madhavi Yadav, Mrs. Deeksha Gupta.

Petitioner-in-person.

Applicant-in-person.

Judgment / Order of the Supreme Court

Judgment

Abhay S. Oka, J.

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FACTUAL BACKGROUND

1. By the judgment of this Court in the case of ***Jitender @ Kalla v. State (Govt of NCT of Delhi) & Ors***[1] [for short, "***Jitender @ Kalla***"], a Bench of two judges of this Court expressed certain concerns regarding the process of designation of Senior Advocates laid down in the decision of this Court in the case of ***Indira Jaising v. Supreme Court of India***[2] [for short, "***Indira Jaising-1***"]. The Bench directed that the concerns expressed by it be placed before the Hon'ble Chief Justice of India for considering whether the issues arising out of the said concerns need to be placed before a larger Bench

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of appropriate strength. As per the administrative order passed by the Hon'ble Chief Justice of India, the issues arising out of the process of designating Advocates as Senior Advocates raised in the judgment dated 20th February 2025 in ***Jitender @ Kalla*** have been placed for consideration before this Bench. Before we delve into the concerns and issues raised by the Bench of two judges, it is important to consider the factual history that gave rise to the issues which require consideration.

A. Indira Jaising – 1

2. Section 16 of the Advocates Act, 1961 (for short, "the Advocates Act") creates two classes of Advocates, namely, senior Advocates and other Advocates. Under Sub-Section (2) of Section 16 of the Advocates Act, the Supreme Court and High Courts have the power to designate an Advocate as a Senior Advocate with his consent. Earlier, the Supreme Court and High Courts, in exercise of powers under Section 16, followed distinct systems of designating Senior Advocates. A Writ Petition was filed by Ms. Indira Jaising, Senior Advocate, before this Court under Article 32 of the Constitution of India seeking reforms in the system of designation of senior Advocates by the Supreme Court of India. There were several other petitions challenging the processes of designation followed by various High Courts. The Gujarat High Court Advocates' Association had filed an Intervention Application challenging the validity of Section 16 of the Advocates Act and Order IV Rule 2 of the Supreme Court Rules, 2013 on the ground that the classification of Advocates into two distinct classes was not based on any reasonable and acceptable basis and was violative of Articles 14 and 18 of the Constitution of India. The issues were clubbed together and heard by a bench of three judges of this Court.

3. Vide an elaborate judgement in the said case of ***Indira Jaising-1***, a coordinate Bench upheld the validity of Section 16 of the Advocates Act and Order IV Rule 2 of the Supreme Court Rules. This Court also exercised powers under Article 142 of the Constitution of India with a view to bringing about uniformity in approach in the process of designation. The guidelines laid down by this Court are as follows:

> **"73. It is in the above backdrop that we proceed to venture into the exercise and lay down the following norms/guidelines which henceforth would govern the**

exercise of designation of Senior Advocates by the Supreme Court and all High Courts in the country. The norms/guidelines, in existence, shall be suitably modified so as to be in accord with the present.

73.1. All matters relating to designation of Senior Advocates in the Supreme Court of India and in all the High Courts of the country shall be dealt with by a Permanent Committee to be known as "Committee for Designation of Senior Advocates";

73.2. The Permanent Committee will be headed by the Hon'ble the Chief Justice of India and consist of two seniormost Judges of the Supreme Court of India [or High Court(s), as may be]; the learned Attorney General for India (Advocate General of the State in case of a High Court) will be a Member of the Permanent Committee. The above four Members of the Permanent Committee will nominate another Member of the Bar to be the fifth Member of the Permanent Committee;

73.3. The said Committee shall have a permanent Secretariat, the composition of which will be decided by the Chief Justice of India or the Chief Justices of the High Courts, as may be, in consultation with the other Members of the Permanent Committee;

73.4. All applications including written proposals by the Hon'ble Judges will be submitted to the Secretariat. On receipt of such applications or proposals from Hon'ble Judges, the Secretariat will compile the relevant data and information with regard to the reputation, conduct, integrity of the advocate(s) concerned including his/her participation in pro bono work; reported judgments in which the advocate(s) concerned had appeared; the number of such judgments for the last five years. The source(s) from which information/data will be sought and collected by the Secretariat will be as decided by the Permanent Committee;

73.5. The Secretariat will publish the proposal of designation of a particular advocate in the official website

of the Court concerned inviting the suggestions/views of other stakeholders in the proposed designation;

73.6. After the database in terms of the above is compiled and all such information as may be specifically directed by the Permanent Committee to be obtained in respect of any particular candidate is collected, the Secretariat shall put up the case before the Permanent Committee for scrutiny;

73.7. The Permanent Committee will examine each case in the light of the data provided by the Secretariat of the Permanent Committee; interview the advocate concerned; and make its overall assessment on the basis of a point-based format indicated below:

Sl. No.	Matter	Points
1.	Number of years of practise of the applicant advocate from the date of enrolment. [10 points for 10-20 years of practise; 20 points for practise beyond 20 years]	20 points
2	Judgments (reported and unreported) which indicate the legal formulations advanced by the advocate concerned in the course of the proceedings of the case; pro bono work done by the advocate concerned; domain expertise of the applicant advocate in various branches of law, such as Constitutional law, InterState Water Disputes, Criminal law, Arbitration law, Corporate law, Family law, Human Rights, Public Interest Litigation, International law, law relating to women, etc.	40 points
3.	Publications by the applicant advocate	15 points
4.	Test of personality and suitability on the basis of interview/interaction	25 points

73.8. All the names that are listed before the Permanent Committee/cleared by the Permanent Committee will go to the Full Court.

73.9. Voting by secret ballot will not normally be resorted to by the Full Court except when unavoidable. In the event of resort to secret ballot, decisions will be carried by a majority of the Judges who have chosen to exercise their preference/choice.

73.10. All cases that have not been favourably considered by the Full Court may be reviewed/reconsidered after expiry of a period of two years following the manner indicated above as if the proposal is being considered afresh;

73.11. In the event a Senior Advocate is guilty of conduct which according to the Full Court disentitles the Senior Advocate concerned to continue to be worthy of the designation, the Full Court may review its decision to designate the person concerned and recall the same."

(emphasis added)

4. Recognising that the guidelines may require reconsideration in the future through suitable deletions/additions, in paragraph 74 of ***Indira Jaising-1,*** it was held that: -

> "74. We are not oblivious of the fact that the guidelines enumerated above may not be exhaustive of the matter and may require reconsideration by suitable additions/ deletions in the light of the experience to be gained over a period of time. This is a course of action that we leave open for consideration by this Court at such point of time that the same becomes necessary."

B. Indira Jaising – 2

5. In view of the aforesaid paragraph 74, several applications seeking modification of the guidelines conceived in ***Indira Jaising-1*** were filed. Another coordinate Bench of this Court in the case of ***Indira Jaising v. Supreme Court of India***[3] [for short,

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"***Indira Jaising-2***"], reconsidered the guidelines and made the following modifications:

a. The norms enumerated in ***Indira Jaising-1*** required 10 points to be given for all Advocates practicing between 10-20 years and 20 points for all Advocates who had practiced beyond 20 years. It was argued that, as a result, an applicant with 11 years of practice shall obtain the same number of points as an applicant with 19 years of practice. In order to iron out this crease, this Court observed that under this category, one mark shall be allocated for every year of practice between 10-20 years.

b. The procedure established in ***Indira Jaising-I*** laid down that after evaluation of the permanent committee, voting by secret ballot shall be resorted to only in unavoidable circumstances. However, with time, it was noted that secret ballot voting had become a frequent practice. Even when the permanent committee had conducted a proper assessment, the final decision often depended on the vote of the Full Court. Recognizing the validity of several concerns raised regarding the use of secret ballot, this Court reaffirmed that such a method must remain an exception, and if it is employed, the reasons for doing so must be clearly recorded by the Full Court.

c. The criterion listed at Serial No. 2 in the table under Paragraph 73.7 of ***Indira Jaising-I*** was considered the most significant, as it encompassed reported and unreported judgments, *pro bono* work, and an applicant's expertise in various branches of law. Consequently, the marks allocated to this criterion were increased by 10 points, while the marks assigned for an Advocate's publications under Serial No. 3 of the said table were reduced by 10 points.

6. While disposing of the applications for modifications, the coordinate Bench reiterated that the process of improvement is a continuous one and noted:

> **"51.** *We only hope that our endeavour to simplify some aspects of the process results in the designation of more meritorious candidates.* **The process of improvement is a continuous one and we learn from every experience.** This is one more step in the fine-tuning of this exercise and

we hope it achieves the purpose. The ultimate objective is to provide better assistance to litigants and the courts."

(emphasis added)

C. Order expressing doubts with Indira Jaising-1 and Indira Jaising-2 and inviting attention of the Hon'ble Chief Justice

7. In ***Jitender @ Kalla***, the Appellant had filed a Special Leave Petition (for short, 'SLP') against an order of the High Court wherein the High Court directed reconsideration of an application for premature release of another convict. Though the Appellant was not a party to the petition in which the impugned order was passed, strangely, he challenged the said order. Further, while filing the SLP, the Appellant did not disclose that he was directed to undergo imprisonment for thirty years without remission. Therefore, this Court proceeded on the footing that it was a case of a simple life sentence. This Court passed an order dated 19th March 2024, issuing notice and exempting the Appellant from surrendering. Thereafter, on an application being filed by the 1st informant, this Court in its order dated 2nd September 2024 noted that material misrepresentations were made by suppressing the fact that the Appellant was not a party to the proceedings before the High Court and had been sentenced to a fixed term of 30 years. Accordingly, this Court issued notice to the Advocate-on-Record to explain his conduct.

8. Pursuant to the order, the concerned Advocate-on-Record filed an affidavit dated 9th September 2024. In view of the contents of the said affidavit, this Court on 30th September 2024 issued notice to the Senior Advocate (who earlier also appeared as an Advocate for the petitioner in ***Jitender @ Kalla*** before his designation on 14th August, 2024) appearing in the matter to explain what was stated in the affidavit of the Advocate-on-Record. This Court also recorded that in at least half a dozen cases, blatant false statements were made in the writ petitions and Special Leave Petitions that were filed seeking relief of premature release. The concerned Senior Advocate filed his affidavit. Subsequently, in its order dated 21st October, 2024, this Court permitted the concerned Senior Advocate to withdraw and file a better affidavit explaining his conduct. This Court also recorded that the case raises issues of great concern, insofar as the responsibility of Advocates-on-Record of this Court is concerned.

9. Thereafter, on 30.11.2024, the concerned Senior Advocate filed an affidavit tendering an unconditional apology. As recorded by this Court in its judgment in ***Jitender @ Kalla***, the concerned Senior Advocate had previously made misrepresentations before this Court as recorded in the common order dated 1st October 2024 passed in Writ Petition (Crl.) No.631 of 2023, SLP (Crl.) @ D.No.4464 of 2024, SLP (Crl.) No.1775 of 2024, and Writ Petition (Crl.) No.195 of 2024. Further, misrepresentations made by the concerned Senior Advocate were also recorded by this Court in order dated 29th November 2024 passed in Writ Petition (Crl.) No.418 of 2024, and orders dated 18th November 2024 and 3rd January, 2025 passed in SLP (Crl.) Nos.1484-1496 of 2024.

10. Considering the conduct of the concerned Senior Advocate, a contention was raised by Shri Tushar Mehta, learned Solicitor General of India for reconsideration of earlier decisions of this Court in ***Indira Jaising – I*** and ***Indira Jaising – II***, and another decision in the case of ***Amar Vivek Aggarwal v. High Court of Punjab & Haryana and Ors[4].***

11. This Court in its judgment dated 20th February 2025 in ***Jitender @ Kalla*** was of the view that the conduct of the Senior Advocate reflected from the orders of this Court raised an important question of whether the decisions of this Court in the case of ***Indira Jaising – I*** and ***Indira Jaising – II***, which lay down the guidelines for designation of Senior Advocates by this Court and High Courts across the country under the 1961 Act, need reconsideration. A question also arose about whether the regime set up under the said decisions has worked effectively. This Court was of the view that a serious introspection was required to answer the question of whether the Rules framed in terms of the said decisions have ensured that only deserving Advocates are being designated.

12. This Court, accordingly, in paragraph 43 recorded its doubts and concerns with the judgments of this Court in ***Indira Jaising – I*** and ***Indira Jaising – II***, and observed thus:

> **"43.** We are recording our concerns based on submissions made across the Bar. We again reiterate that we mean

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no disrespect to the two binding decisions, and we are recording our concerns only to enable the Hon'ble Chief Justice of India, to decide whether the doubts expressed by us need consideration by an appropriate larger Bench. We flag our concerns as follows:

a) As can be seen from sub-section (2) of Section 16, prima facie, the scheme of the provision is that no advocate can seek designation, but the privilege of designation has to be conferred by this Court or High Courts with his consent. In paragraph 2 of **Indira Jaising-II**, this Court held that designation as a senior advocate in India is a privilege awarded as a mark of excellence to advocates who have distinguished themselves and have made a significant contribution to the development of the legal profession. Therefore, the question that needs serious consideration is whether the Court should permit applications to be made for grant of designation, though the statute does not contemplate that. If the legislature intended to allow advocates to make applications for designation, sub-section (2) of Section 16 would not have provided for this Court or High Courts to take the consent of advocates before designation.

b) Paragraph 73.7 provides for an advocate who has applied for designation to appear before the Permanent Committee for an interview/interaction to test his personality and suitability. If an advocate, by virtue of his standing at the Bar, his ability or special knowledge, deserves designation as a senior advocate, the question which arises is, by making such an advocate appear for an interview, are we not compromising on the dignity of the advocate? Are we not converting the process of designation into a selection process?

c) It is doubtful whether by interviewing a candidate for a few minutes, his personality or suitability can be really tested. 25 points out of 100 are assigned for interview/ interaction, constituting 1/4th of the total points.

d) As recorded in paragraph 73.7, the duty of the Permanent Committee is to make its overall assessment of

the advocate concerned based on a points-based formula. No other method of making an overall assessment has been provided. No one can dispute that an advocate who lacks integrity or does not possess a quality of fairness is disentitled to designation. The reason is simple as such an advocate cannot be held to have any standing at the Bar. Moreover, there may be complaints pending against an advocate with the disciplinary committee of the Bar Councils. The question is how the cases of such advocates can be considered by the Permanent Committee. Even if members of the Permanent Committee know that the applicant advocate lacks integrity, is not fair, does not act as an officer of the Court, or against whom complaints are pending for professional misconduct, there is no scope to reduce the points on that count. If such an advocate excels at the time of the interview or otherwise renders excellent performance, he cannot be given lesser marks because the candidate lacks integrity, character or fairness. The reason is that 25 marks are to be assigned not based on his performance before the Court or his general reputation but on his performance during the interview/interaction.

e) As noted earlier, prior to 31st January 1974, the criteria in sub-section (2) of Section 16 was based on ability, experience and standing at the Bar. That was substituted with effect from 31st January 1974. After the amendment, mere experience in terms of the number of years of practice cannot be relevant. However, "experience in law" needs consideration. Thus, mere experience in terms of number of years of practice is not sufficient. Our concern is whether 10 or 20 points should be mechanically assigned only based on experience or the number of years of practice. It is worth considering whether only the number of years put in practice has any nexus with 'standing' within the meaning of Section 16(2). Further, it is pertinent to note that Sr. No.1 in paragraph 73.7 merely discusses the number of years of practice. The criteria adopted is not of actual years of active practice. Therefore, an advocate who has not been in active practice for 20 years or more will still

get 20 marks because his registration as an advocate has been for more than 20 years.

f) It is a usual experience that applicants submit many judgments in which they have appeared and submit copies of books and many articles written by them. The five members of the Permanent Committee are expected to go through every judgment submitted by the candidate to assign 50 marks. To assign marks for publications, they are expected to go through many articles and books. Whether three senior judges, including the Chief Justice and two senior advocates, should spend hours together for one candidate is a question that needs serious consideration.

g) It is true that the overall assessment made by the Permanent Committee in terms of points is placed before the Full Court. The decision of the Full Court may not necessarily be based on the points assigned by the Permanent Committee. Still, the Full Court cannot altogether ignore the assessment made by the Permanent Committee. When the points-based assessment is not free from defects, the question is whether it can form the basis of assessment of an advocate.

h) Another issue is about the prohibition of secret ballot. The Judges consider the applications in Full Court. The question arises as to whether the Judges should openly discuss the merits and demerits of those who appear before them on the judicial side. Therefore, the issue of permitting voting by secret ballot needs serious reconsideration.

i) There is one more serious area of concern. Whether the guidelines give sufficient opportunity to the advocates practising in our Trial Courts to get designated. There cannot be any dispute that we have very eminent lawyers practising exclusively before our Trial Courts who have the ability, standing and experience in law. They are outstanding public prosecutors and defence lawyers. In most cases, their arguments may not always have legal formulations, as reflected in the judgments in cases wherein they appear. The submissions will necessarily be based on facts. They will not have reported judgments to their

> credit. Such advocates do not stand to gain sufficient points against Sr. No. 2 in paragraph 73.7. We are of the view that designation under sub-section (2) of Section 16 cannot be the monopoly of the advocates practising in higher Constitutional Courts like this Court and the High Courts. Chapter 6, in part VI of the Constitution of India, in a sense, gives the status of Constitutional Courts to our trial and district courts."

13. Based on the doubts and concerns expressed in paragraph 43 of the judgment dated 20th February 2025, this Court, in paragraph 45, observed thus:

> "**45.** Considering what we have observed in paragraph no. 43 above, we direct the Registrar (Judicial) to place a copy of this judgment before Hon'ble the Chief Justice of India. **It is for the Hon'ble Chief Justice of India, to consider whether the issues flagged by us deserve to be considered by a Bench of appropriate strength**."

D. Constitution of this Bench

14. The judgment of this Court in ***Jitender @ Kalla*** dated 20th February 2025 was placed before the Hon'ble Chief Justice of India. Accordingly, pursuant to the directions of the Hon'ble Chief Justice of India, the issues flagged in paragraph 43 of ***Jitender @ Kalla*** have been listed before this Bench. This Bench, in its order dated 25th February 2025, issued notice to various parties. The relevant part of the said order is as follows:

> "**2.** Considering paragraphs 43 and 45 of the judgment dated 20th February, 2025 passed in Criminal Appeal No.865/20252, issue notice to the respondents in Writ Petition (C) No.454/2015. As far as the Supreme Court Advocates-on-Record Association is concerned, it is represented today. Therefore, notice to the Supreme Court Advocates-on-Record Association is not required to be issued. Shri Tushar Mehta, the learned Solicitor General states that he will intimate to the learned Attorney General for India as well as the Union of India so that they will be represented on the next date. Therefore, notice is not required to be issued to the learned Attorney General

and the Union of India as well. As far as the rest of the respondents (except the High Courts) in Writ Petition (C) No.454/2015 are concerned, notice be issued to them through email informing them that the hearing will be on 19th March, 2025. A copy of the judgment dated 20th February, 2025 in Criminal Appeal No.865/20252 as well as this order shall be forwarded along with the notice through e-email."

E. Interlocutory Applications

15. With further experience being gained on the process for designating Senior Advocates, several interlocutory applications were filed seeking modification of the guidelines laid down by this Court and challenging the designation process conducted by various High Courts. In this judgment, we are focusing on the system of designation of Senior Advocates and the concerns expressed about the guidelines laid down by this Court. In addition to the issues flagged in paragraph 43 of ***Jitender @ Kalla***, we will be addressing the issues raised in the following applications:

a) **IA 45959/2022 in IA No.145730-31/2021 in MA No.1502/2020 in WP (C) 454/2015**

IA 145730-31 in MA 1502/2020 arises out of the designation process conducted at the High Court of Patna, seeking modification of the guidelines laid down in the cases of ***Indira Jaising I and II*** to bring objectivity, transparency and fairness. These applications were dismissed by the Order of the Registrar dated 23rd December 2021 in terms of Order XV Rule 5 of the Supreme Court Rules, 2013, observing that the sum and substance of these IAs was in the nature of seeking review of the judgment in *Indira Jaising II*. IA 45959/2022 is an appeal against the Registrar's order dated 23rd December 2021.

b) **IA No. 55879/2023 in MA No.1502/2020 in WP (C) 454/2015**

These applications pray for the reconsideration and modification of guidelines laid down by the Supreme Court in light of the observations made in Paragraph 74 of ***Indira Jaising I***. The applicant has made several suggestions, including giving special privilege to Advocates with 30 years' experience, deleting the criteria for publications, deleting the marking on the basis of

an interview, conducting voting by secret ballot, designating Advocates without requiring submission of applications and designating mofussil Advocates as well.

c) **IA No. 36111/2023 in MA No. 262/2023 in WP (C) 454/2015**

These applications are filed by the Union of India seeking modification of the judgment of this Court in the case of ***Indira Jaising I, contending that allotment of 40% of weightage to publications and interview is highly subjective and need not be an effective parameter to judge the*** suitability of a candidate. Directions are sought to the effect that the applicant's performance shall be evaluated in a Full Court meeting by secret ballot method.

SUBMISSIONS

A. Submissions by the Learned Attorney General for India

16. We have heard the learned Attorney General for India. He submitted that the convention before ***Indira Jaising – I*** was to ask an Advocate for his consent before designating him as a Senior Advocate. However, due to the large number of Advocates joining the Bar, he submitted that the earlier convention of approaching Advocates instead of inviting applications would not be feasible. He further submitted that designation as a Senior Advocate is a milestone in the career of an Advocate, and asking an Advocate for consent should not be the only way of conferring designation. He acknowledged that the existing system has flaws but submitted that by inviting applications, the system has opened the doors for an aspirational class of lawyers that he terms as the 'middle class' to apply for designation. He submitted that there are expanding disciplines within the legal profession, and the number of talented Advocates continues to grow. He submitted that the system of inviting applications holds relevance for such aspiring Advocates, and it is necessary to promote them to grow in the profession. He submitted that this Court has opened the system to such Advocates by permitting the invitation of applications.

17. Regarding the current system of designation, the learned Attorney General submitted that he is personally uncomfortable with the idea of an interview/interaction and finds it embarrassing, as all applicants are his peers, whom he knows personally. If the interview is to be

retained, the learned Attorney General would submit that personal questions regarding how the applicant is as a person should be asked instead of legal questions. He submitted that the factors of the marking system can change over the years. He submitted that Section 16 of the Advocates Act is merely a signpost which gives a broad roadmap for designation and that this Court would have to use its powers under Article 142 of the Constitution of India to fill gaps and improve the system as and when needed. He submitted that the inclusion of Advocates in the Permanent Committee is not restricted by Section 16 of the Advocates Act and has been made by this Court using powers under Article 142 of the Constitution of India.

18. The learned Attorney General has also shared with this Court his experiences while being part of the Permanent Committee for the designation of Senior Advocates by the Supreme Court. The learned Attorney General frankly stated that it was not possible for him to peruse the entire material submitted by applicants, such as books, articles, reported judgments, etc., as it was very voluminous. He admitted that it is not possible for the Permanent Committee to peruse all the material. He submitted that the assignment of marks by the Permanent Committee of the Supreme Court was in the nature of recommendations, after which there was nothing else for the Full Court to add, except to confirm these recommendations. The learned Attorney General was of the view that if the Permanent Committee does its assessment properly, voting by secret ballot would become unnecessary. He submitted that the only scope of evaluation left for the Full Court can be regarding issues of ethics and integrity.

B. Submissions by the Learned Solicitor General of India

19. The learned Solicitor General appeared on behalf of the Secretary General of the Supreme Court of India, as also in his capacity as the Solicitor General of India. Appearing on behalf of the Secretary General of the Supreme Court of India, the learned counsel took us through Para 74 of the judgement in ***Indira Jaising-1*****.** He submitted that in the light of the experience gained by the Supreme Court of India, since the designation procedure prescribed in ***Indira Jaising-1*** was conceived, several predicaments have arisen, which show that the system has not yielded the results it intended to achieve. He submitted that the assessment conducted by a permanent committee, as proposed by ***Indira Jaising-1****,* should be discontinued. In support

of this submission, he relied on Sub-Section (2) Section 16 of the Advocates Act, 1961 which reads thus:

> "**Section 16. Senior and other advocates.**
>
> (1)….
>
> (2) An advocate may, with his consent, be designated as senior advocate **if the Supreme Court or a High Court is of opinion** that by virtue of his ability, 1[standing at the Bar or special knowledge or experience in law] he is deserving of such distinction"

20. He submitted that Section 16 of the Advocates Act does not envisage splitting the Full Court into smaller bodies. Instead, it provides for conferment of distinction by a collective body based on criteria laid down in the provision. The procedure laid down under ***Indira Jaising-1***, however, deviates from the statute by allowing individual assessment by a Permanent Committee comprising of the Chief Justice and two senior-most judges of the respective court; the learned Attorney General for India (or Advocate General for the State in case of a High Court); and a fifth member from the bar appointed by the above four members. He further argued that Section 16 vests the Supreme Court and High Courts with discretionary power to designate Senior Advocates, thereby excluding any external participation. Consequently, the involvement of members of the bar, including the Attorney General for India or the Advocate General for the respective state, is not only unjustified but also contrary to the intent of the provision, which entrusts this responsibility solely to the Full Court. Additionally, he submitted that the procedure prescribed by ***Indira Jaising-1*** restricts the use of voting by secret ballot only in unavoidable circumstances. He argued that the stature of individuals forming part of the Permanent Committee may discourage or deter other judges from expressing their views freely. To ensure that the collective view of the Full Court is expressed without any undue influence, he urged that voting by secret ballot be reinstated as a mandatory practice.

21. The learned Solicitor General raised serious objections to the marks system postulated by ***Indira Jaising-1***. He contended that Section 16 of the Advocates Act provides for designation based on three predominant criteria: an Advocate's standing at the Bar, special knowledge, or experience in law. However, he submitted

that the marks system, as presently structured, fails to account for an Advocate's standing at the Bar, which, in his view, can only be assessed through their performance in court and integrity.

22. He pointed out that the marks system provides for awarding up to 25 marks based on the interview or interaction, but does not include any provision to deduct marks for professional misconduct. As a result, an Advocate who performs well in the interview and scores well in other categories may still be designated, even if he or she has a reputation for misleading the court or has been held guilty of contempt. He contended that this omission undermines the integrity of the selection process and fails to ensure that only deserving candidates are designated. The learned counsel further submitted that the interview process prescribed under the current framework is an inadequate measure for assessing the suitability and personality of a candidate. He contended that a brief interaction of 15 or 30 minutes cannot be a definitive test of an Advocate's competence, integrity, or standing at the Bar. An Advocate's capabilities, he argued, must be evaluated primarily on the basis of their courtroom performance over time, rather than a short and subjective interview.

23. He further submitted that only the Court before which an Advocate regularly practices should have the authority to confer designation. He pointed out that the procedure prescribed under ***Indira Jaising-1*** provides for the award of marks based on various criteria; however, it leaves the determination of the minimum threshold for designation at the discretion of the Full Court. As a result, the absence of a uniform standard has led to inconsistencies in the designation process across different High Courts. He contended that this lack of uniformity allows lawyers to submit applications before multiple High Courts in an attempt to secure designation, thereby undermining the principle that an Advocate should be designated by the court where he primarily practices.

24. Appearing in his capacity as the Solicitor General of India, learned counsel contended that the objective behind the system of designation, namely, the prevention of canvassing/lobbying, has not been fulfilled. He submitted that the inclusion of members of the Bar in the selection process, coupled with the establishment of a Permanent Committee responsible for evaluating applications and assigning marks, has, in fact, facilitated canvassing/lobbying rather than curbing it.

C. Submissions on behalf of the High Court of Delhi

25. The learned advocate appearing for the High Court of Delhi largely supported the submissions made by the learned Solicitor General. He submitted that designation must be by conferment and not by application. He submitted that there should be representations from the Bar and that a proposal for designation can be initiated by the Chief Justice, two sitting judges, or any two Senior Advocates who have been designated for more than 5 years. He submitted that such proposals should be placed before the Full Court, which would vote on them through the method of secret ballots. He submitted that such proposals should be considered twice a year, or at the very least once a year.

D. Submissions on behalf of the High Court of Karnataka

26. The learned advocate for the High Court of Karnataka stated that a committee had been constituted to invite suggestions. The learned advocate submitted that the suggestions received were that interviews should be discontinued. However, if the committee that is considering proposals for designation is not acquainted with a particular applicant for the reason that he has not practiced before that court because he practices in a different region or only before Trial Courts, there should be a provision for calling upon such an applicant for an interaction. He submitted that the criteria of integrity should be included by reducing marks for other criteria. Further, he submitted that the number of designations must be decided based on the number of practicing Advocates to ensure that designation remains a distinction and does not become a title that is too widely distributed. The learned advocate submitted that the object of designation is to mentor junior members of the Bar, to assist the Court in cases in an unbiased manner, and to project to the Bar that honesty, integrity, erudition and learning matters. He submitted that a designation is not an honour to be conferred on an Advocate based on several years of practice. Instead, he has to be a role model to the younger members of the Bar. His honesty and integrity, learning, erudition, skilful advocacy and oral arguments, well-reasoned presentation in court, apart from standing at the Bar, must be taken into account. He further submitted that active practice should be an essential requirement for designation. Mere theoretical knowledge is not sufficient. Moreover, the designation is a process by which the

courts get the assistance of designated senior counsels, who will not be a mere mouthpiece of the parties, but will assist the Court in coming to a just conclusion irrespective of the fact that they represent one party to the lis. Lastly, he submitted that an active practitioner would not have time to publish articles and the present criteria of awarding marks for it should be done away with.

E. Response on behalf of the High Court of Madhya Pradesh

27. We have also received a representation from the High Court of Madhya Pradesh. The representation calls for more transparency in the selection process by publishing the evaluation criteria, applications, and reasons for selection or rejection in the public domain. The High Court of Madhya Pradesh also suggests that regular and timely designation must take place by conducting the process at fixed intervals. There must also be involvement of the Bar Council and independent legal experts in the Selection Committee, and peer review from fellow Advocates and views from all judges may be collected. Their submission is also to reduce subjectivity and bias in evaluations by reducing reliance on interviews and having a structured scoring system. They also suggest promoting diversity and equal opportunities for women, first-generation lawyers, lawyers from diverse regions, including District Courts, and representation in different fields of law, not just traditional litigation. The High Court has also represented that secret ballot must be restricted. There must also be consideration of specialization-based designations, recognizing pro bono work and legal scholarship, introducing review mechanism for rejected candidates, and standardized rules for all High Courts.

F. Submissions on behalf of the High Court of Punjab and Haryana

28. Shri P.S. Patwalia, learned Senior Advocate appearing for the High Court of Punjab and Haryana, submitted that his submissions are in tune with the submissions made by the learned Solicitor General. He submitted that the requirement of an interview for Advocates seeking designation as Senior Advocates is unnecessary and reduces the importance of courtroom performances. Accordingly, he submitted that the evaluation should be based on courtroom performance rather than an interview process. The learned Senior Advocate submitted that in accordance with Section 16 of the Advocates Act, no rigid

criteria for awarding marks should be prescribed for designation, and the matter should be left to the discretion of the judges. He submitted that the current evaluation process requires significant time and effort, involving the review of numerous judgments, books, and articles authored by applicants. An overemphasis on such materials has detracted from the importance of courtroom performance and is testing an applicant based on his performance outside the courtroom in libraries. The learned senior advocate submitted that judges, particularly those who have been elevated from the Bar, possess fair knowledge of their former colleagues' professional capabilities and see their performance on a daily basis. He submitted that no criteria where marks are awarded can accurately capture the assessment of judges that takes place on a regular basis based on courtroom performance. He submitted that designation should be extended to those members of the Bar who exclusively practice before the Trial Courts as well and those judges from the Bar would know the quality of their advocacy. Even judges appointed from the judicial services would be able to determine and know of the advocacy of Advocates practicing before Trial Courts.

G. Submissions on behalf of the Petitioner-in-Person in WP (C) 454/2015

29. We have heard Ms. Indira Jaising appearing as Petitioner-in-Person. Ms. Jaising raised a preliminary objection regarding the jurisdiction of this Court to hear the reference. She submitted that this Court cannot review the judgments in ***Indira Jaising – I*** and ***Indira Jaising – II*** without an application being made for review. She submitted that IA No. 45959 of 2022 in IA No. 145730-31 of 2021 in MA 1502 of 2020 in WP (C) 454 of 2015 filed by advocates of the Patna High Court for modification of the judgment was not served upon her. When this Court called for records of service on the second day of hearing, Ms. Jaising admitted that she was incorrectly informed and that the application was duly served on her advocate-on-record. She submitted that the IA was in the nature of a modification, which is different from a review of the judgment.

30. Accordingly, she submitted that this Court could only draw jurisdiction from paragraph 74 of ***Indira Jaising-I*** and make suitable additions/deletions. She submitted that for review of both the judgments, this Court would require a review petition to be placed before it

in accordance with Article 137 of the Constitution of India read with Order XLVII of the Supreme Court Rules, 2013. Further, any reconsideration beyond the remit of paragraph 74 would have to be referred to a larger bench.

31. On the merits of the case, Ms. Jaising opened her submissions by supporting the system introduced by ***Indira Jaising – I*** and ***Indira Jaising – II***. Ms. Jaising contended that the designation process must be objective, fair, and transparent, and no power should remain unguided. Since the exercise of designation is an administrative function of the Supreme Court, it is subject to the scrutiny of Article 14 of the Constitution of India. Clear guidelines are required to prevent arbitrary decision-making.

32. On the marking system, Ms. Jaising admitted that there is no provision for awarding lower marks for lack of integrity. She argued that the existing marking system is not exhaustive. She acknowledged that the merit of a candidate should not be solely determined by academic qualifications but should be assessed based on multiple factors such as reputation, conduct, and integrity. She submitted that there are two methods of ascertaining integrity – through official records and by gathering information from stakeholders. Regarding the first method of ascertaining integrity, she emphasized that financial records, criminal records, or any other records of disciplinary action can be checked. The Court can also direct the applicant to file an affidavit calling upon him to disclose certain details such as FIRs registered against him, convictions/ penalties imposed, arrests or detentions made, etc. She submitted that this Court, as well as some High Courts, already invite this information at the time of making an application. In respect of the second form of ascertaining integrity, she submitted that consultation with relevant stakeholders is the only way to ascertain integrity or reputation at the Bar.

33. Ms. Jaising admitted that in the Writ Petition (C) No. 454 of 2015, she had not prayed for any interview system to be included in the process of designation and that interviews are susceptible to manipulation. However, she supported retaining the interview system and submitted that the weightage of marks given to an interview can be reduced and marking on integrity be explicitly included. She suggested renaming the process from ‘interview’ to ‘interaction’.

34. Ms. Jaising submitted that the marks given to each criterion can be modified. For instance, she suggested that contributions made to public life/service, whether the candidate has an academic bent of mind, etc., should also be considered. She proposed that examination of audited bank accounts, *pro bono* work, library resources, the number of juniors mentored, and the ability to critique judicial decisions should be considered as criteria.

35. Ms. Jaising submitted that the originality of arguments reflected in court judgments must be considered. However, Ms. Jaising fairly admitted that the quality of submissions and originality of arguments cannot be ascertained, as judgments do not fully reflect who made arguments, what arguments were made, and judges may also sometimes add on to the arguments made while finally adjudicating the issue at hand. For this, Ms. Jaising submitted that supplying written submissions and the practice of recording the name of the Advocate making submissions in the judgment must be made mandatory. She contended that the quality of advocacy, rather than case outcomes, should be the decisive factor in designation.

36. Ms. Jaising advocated for retaining publications as a factor in assessment. She submitted that for evaluating the judgment and academic work submitted by the candidates, the Permanent Committee can take assistance from experts from the field of academics in law or of the Centre for Research and Planning functioning under the aegis of this Court.

37. On the issue of how to determine experience at the Bar as some Advocates may have enrolled decades back but not be in active practice, Ms. Jaising submitted that it is not practically possible to calculate years of active/actual practice. She submitted that any system may not be able to take into account contingencies faced by Advocates, and the date of enrolment should continue to be the criterion.

38. On the issue of domain expertise, she acknowledged that specialization exists, with some Advocates practicing exclusively in tax law or before specialized tribunals like the National Green Tribunal. She submitted that such Advocates should be assessed based on their judgments and contributions within their specific domains.

39. Ms. Jaising also advocated for declaring cutoff marks and declaring the same after results, or even before the interview to determine where

one stands. With such a system, she submitted that any deduction in interview marks on integrity would make such an applicant fall below the cutoff.

40. On the issue of secret ballot, Ms. Jaising admitted that whether secret ballot should be resorted to or not should be left to the Full Court to decide. She submitted that there should not be any general rule governing the use of secret ballots, and it can vary from designation to designation.

41. Ms. Jaising admitted that the current system is not perfect and there is room for improvement, such as prohibiting canvassing by Advocates, prohibiting written recommendations being made by a judge or multiple judges for a particular candidate, publishing the application made and marks secured by an applicant, disclosure of probity and information relating to criminal/disciplinary proceedings through affidavits, deducting interview marks for questionable integrity, and taking help of external parties to evaluate judgments and academic work.

H. Submissions on behalf of the National Lawyers Campaign

42. The learned counsel, Shri Mathew J. Nedumpara, appearing on behalf of the National Lawyers Campaign, submitted that Section 16 of the Advocates Act vests discretionary power in the High Courts and the Supreme Court to confer designations. Consequently, he contended that the practice of inviting applications from lawyers is unsustainable. The learned counsel emphasized that many lawyers may consider it beneath their dignity to apply for designation and undergo an interview process. Moreover, he argued that since the Parliament has expressly provided for discretionary designation, the Supreme Court lacks jurisdiction to frame guidelines for the designation of Senior Advocates on the basis of applications. He further submitted that the creation of a Permanent Committee leads to excessive canvassing and results in the designation of only the kith and kin of its members.

I. Submissions of Applicants in IA 45959 of 2022 in 145730-31 of 2021 in MA 1502 Of 2020 in WP (C) 454 of 2015

43. Learned Senior Counsel for the intervenors supported the submissions of the learned Solicitor General. He relied on the judgement of

this Court in the case of ***E.S. Reddy v. Chief Secretary, Govt. of Andhra Pradesh*** **(1987) 3 SCC 258**, wherein this Court observed that designation under Section 16(2) of the Advocates Act is an honour and privilege conferred by the Full Court on Advocates of standing and experience. He submitted that Section 16 mandates obtaining the Advocate's consent for designation, reinforcing that it is a recognition of merit. He further argued that the procedure in ***Indira Jaising-1*** improperly confers an inherent right to be considered for designation without any mechanism to address grievances, hence the entire system of applications is contrary to the statutory scheme.

J. Submissions of Respondent no. 2 (complainant) in Jitender @ Kalla v. State of NCT Delhi (Crl.) Appeal No. 865 of 2025

44. Learned counsel Shri Pranav Sachdeva, appearing for Respondent No. 2, i.e., the complainant in Criminal Appeal No. 865 of 2025, supported the application system introduced in ***Indira Jaising-1***. He refuted the contention that the application procedure, including an interview, demeans Advocates seeking a distinction. He noted that several high-level appointments, such as the Central Vigilance Commissioner, Lokpal, and Central Information Commissioner, are made through a similar application process. He submitted that the application system promotes transparency, benefitting litigants and the public at large.

K. Submission of Supreme Court Advocates-On-Record Association

45. Learned counsel Mr. Vipin Nair, appearing for the Supreme Court Advocates-on-Record Association, submitted that the marks system, including the existing criteria introduced in ***Indira Jaising-1 and 2*** should be retained. However, he suggested that the marks may be adjusted to address concerns that have emerged from the experience of the Supreme Court and High Courts.

L. Submissions of the Supreme Court Arguing Counsel Association (unregistered)

46. Learned counsel Mr. Anilendra Pande, appearing for the Supreme Court Arguing Counsel Association (unregistered), submitted that the designation system should be all-inclusive, ensuring consideration for Advocates from rural backgrounds, backward classes, and marginalized communities.

CONSIDERATION

A. Scheme of Section 16 of the Advocates Act

47. Section 16 of the Advocates Act provides for the designation of Advocates as Senior Advocates. Section 16 reads thus:

> **"16. Senior and other advocates**.—(1) There shall be two classes of advocates, namely, Senior Advocates and other advocates.
>
> (2) An advocate may, with his consent, be designated as Senior Advocate **if the Supreme Court or a High Court is of opinion that by virtue of his ability, standing at the Bar or special knowledge or experience in law he is deserving of such distinction.**
>
> (3) Senior Advocates shall, in the matter of their practice, be subject to such restrictions as the Bar Council of India may, in the interests of the legal profession, prescribe.
>
> (4) An advocate of the Supreme Court who was a Senior Advocate of that Court immediately before the appointed day shall, for the purposes of this section, be deemed to be a Senior Advocate:
>
> Provided that where any such Senior Advocate makes an application before the 31st December, 1965, to the Bar Council maintaining the roll in which his name has been entered that he does not desire to continue as a Senior Advocate, the Bar Council may grant the application and the roll shall be altered accordingly."
>
> (emphasis added)

48. By the Act 60 of 1973, Sub-section (2) was amended. The words starting from 'standing' and ending with 'law' were incorporated by the Act 60 of 1973 with effect from 31st January, 1974, in place of the words 'experience and standing at the Bar'.

49. We may note here that in the statement of objects and reasons of the Advocates Act, it was mentioned that the main feature of the Act was the integration of the Bar into a single class of legal practitioners known as Advocates. Perhaps, the need was felt to do so by the

Legislature as prior to the commencement of the Advocates Act, there were different classes of legal practitioners such as Supreme Court Advocates, High Court Advocates/Pleaders, Advocates of High Court (OS), District Court Pleaders, Vakils, Mukhtars, Revenue Agents etc. Though the object was to make integration of the Bar into a single class, Sub-section (1) of Section 16 created two classes of Advocates, namely, Senior Advocates and other Advocates. The power to designate an Advocate as Senior Advocate is vested with this Court and the High Courts.

50. There are restrictions imposed by this Court as well as the High Courts on the designated Senior Advocates. For example, clause (b) of Rule 2 of Order (IV) of the Supreme Court Rules, 2013 imposes restrictions on Senior Advocates. One such restriction is that a Senior Advocate shall not file a vakalatnama or act in any Court or Tribunal in India. Another restriction is that he shall not appear without an Advocate-on-Record (for short 'AOR') in the Court or without a junior in any other Court or Tribunal in India. Another important restriction is that a Senior Advocate cannot accept directly from a client any brief or instructions to appear in any Court or Tribunal in India. We find that similar restrictions have been imposed on the Senior Advocates by various High Courts. Under Sub-section (3) of Section 16, the Bar Council of India has the power to impose restrictions on the Senior Advocates in the matter of their practice in the interest of the legal profession. However, there is nothing placed on record to show that the Bar Council of India has framed any Rules in terms of Sub-section (3) of Section 16.

51. Sub-section (2) of Section 16 lays down the qualifications for designation as a Senior Advocate. Obviously, the standard of conduct of Senior Advocates in all respects must be much higher than the standard of other Advocates. Sub-section (2) refers to ability, standing at the Bar or special knowledge or experience in law. In our view, ability and standing at the Bar are two important qualifications while designating Advocates as Senior Advocates by Full Court.

(i) Ability

52. When the provision talks about ability, it will include very sound knowledge of law and especially the branches of law in which the Advocate is practicing. The ability will also include, apart from

sound knowledge of law, skills of advocacy, which are required to effectively conduct a case. It will include mastery over the art of cross-examination in case of Advocates practicing on the original sides of the High Court or Trial and District/Sessions Courts. Writing articles and commentaries on law will be part of ability. Capacity to rationally critique judicial decisions will be a facet of ability.

(ii) Standing at the Bar

53. As far as the standing at the Bar is concerned, an Advocate can be said to have standing at the Bar provided he has certain qualities and a reputation which is built over a span of time. Standing at the Bar is not defined or understood with physical number of years an Advocate puts in. But the standing at the Bar is a mixture of several qualities of a professional viz: (i) integrity (ii) respect (iii) confidence (iv) dependability (v) honesty (vi) communication skills (vii) confidence and (viii) commitment to administration of justice and rule of law. Some of the qualities which give an Advocate a standing at the Bar are as follows:

(a) He/she is always fair while conducting cases before the Courts;

(b) His/her behaviour with the Judges and other members of the Bar is respectful;

(c) He/she maintains decorum while conducting cases before the Court;

(d) He/she always acts first as an officer of the Court and, thereafter, a mouthpiece of his/her client;

(e) He/she follows the highest standards of professional etiquette and ethics;

(f) He/she acts as a mentor to the junior Advocates;

(g) He/she does *pro bono* work; and

(h) He/she carries respect in the legal fraternity.

54. We must note here that honesty and integrity are the qualities which every member of the Bar, whether senior or otherwise, must possess. This is something basic. Merely because an Advocate is a good human being, this by itself does not qualify the Advocate for designation.

(iii) Special Knowledge of Law

55. Sub-section (2) of Section 16 refers to 'special knowledge of law'. If an Advocate has special knowledge in a particular branch of law, that is also a qualification for designation. There are specialized branches of law such as the Arbitration, Insolvency and Bankruptcy, Company Law, Intellectual Property Law, Tax Laws etc. The designation as a Senior Advocate cannot remain the monopoly of the Advocates practicing in High Courts and this Court. If the designations are conferred only to the Advocates practicing in High Courts and this Court, Section 16(2) will be exposed to the vice of arbitrariness which is prohibited under Article 14 of the Constitution. The Advocates practicing before Trial and District Courts or specialized Tribunals can possess qualification laid down in Section 16(2). The Advocates practicing in Trial/District Courts may have extraordinary skills in drafting pleadings and conducting cross-examination. Considering the very object of the Advocates Act, we must note that an Advocate practicing in Trial and District Courts cannot be treated as inferior to an Advocate who practices in this Court or High Courts. Even such an Advocate can have ability, standing at the Bar, special knowledge or experience in law for designating as Senior Advocate. The qualities of ability, standing at the Bar, and special knowledge and experience in law are present in the Advocates practicing in Trial and District Courts as much as of the Advocates practicing in the High Courts and the Supreme Court.

(B) The reasons recorded for exercise of Jurisdiction under Article 142 of the Constitution in Indira Jaising-1

56. The occasion for considering the issue in the case of ***Indira Jaising-1*** arose as the petitioner therein, a Senior Advocate filed a writ petition in this Court *inter alia* seeking a writ or direction declaring that the system of designation of Senior Advocates by the recently introduced method of vote is arbitrary and contrary to the notions of diversity violating Articles 14, 15 and 21 and therefore, it is unconstitutional and null and void. As can be seen from paragraphs 23 and 24 of the decision in the said case, this Court found that there was no uniform criterion or yardstick adopted by the High Courts. In paragraph 23, this Court has noted the practice prevailing in this Court regarding the designation of Advocates as Senior Advocates. This Court, thereafter, referred to the practice followed in different High Courts. In paragraph 24, this Court held thus:

"**24**. Insofar as the High Courts of the country are concerned, it appears that there is no uniform criteria or yardstick. Age; income; length of practise; requirement of practise in the High Court in which designation is sought or in a court subordinate to such High Court, appear to be the broad parameters which different High Courts have adopted either by incorporation of all such parameters or some or few of them. The position would be clear from the following resume which indicates the practice prevailing in different High Courts of the country."

56.1 In paragraph 58 of the said decision, this Court observed that an endeavour should be to lay down norms/guidelines/ parameters to make the exercise conform to the three requirements of the statute, namely, the ability of the Advocate concerned, his/her standing and his/her special knowledge or experience in law. In paragraphs 69 and 70, this Court observed thus:

"**69.** The guidelines governing the exercise of designation by the Supreme Court have already been noticed so also the guidelines in force in the various High Courts. Though steps have been taken to bring in some objective parameters, we are of the view that the same must be more comprehensively considered by this Court to ensure conformity of the actions/decisions taken under Section 16 of the Act with the requirement of constitutional necessities, particularly, in the domain of a fair, transparent and reasonable exercise of a statutory dispensation on which touchstone alone the exercise of designation under Section 16 of the Act can be justified. We have also noticed the fact that until the enactment of the Advocates Act, 1961 and the Supreme Court Rules, 1966 the option to be designated as a Senior Advocate or not was left to the advocate concerned, with the Full Court having no role to play in this regard. We have also noticed that in other jurisdictions spread across the Globe, where the practice continues to be in vogue in one form or the other, participation in the decision-making

process of other stakeholders has been introduced in the light of experience gained.

70. We are, therefore, of the view that the framework that we would be introducing by the present order to regulate the system of designation of Senior Advocates must provide representation to the community of advocates though in a limited manner. **That apart, we are also of the view that time has come when uniform parameters/guidelines should govern the exercise of designation of Senior Advocates by all courts of the country including the Supreme Court. The sole yardstick by which we propose to introduce a set of guidelines to govern the matter is the need for maximum objectivity in the process so as to ensure that it is only and only the most deserving and the very best who would be bestowed the honour and dignity. The credentials of every advocate who seeks to be designated as a Senior Advocate or whom the Full Court suo motu decides to confer the honour must be subject to an utmost strict process of scrutiny leaving no scope for any doubt or dissatisfaction in the matter.**"

(emphasis added)

56.2 In paragraph 73 of the said decision, this Court held thus:

"73. It is in the above backdrop that we proceed to venture into the exercise and lay down the following norms/guidelines which henceforth would govern the exercise of designation of Senior Advocates by the Supreme Court and all High Courts in the country. The norms/guidelines, in existence, shall be suitably modified so as to be in accord with the present."

57. It is obvious that an endeavour was made by this Court to bring about uniformity in the norms/guidelines followed by this Court and High Courts in the designation of Advocates as Senior Advocates. This exercise was undertaken, obviously, invoking the jurisdiction of this

Court under Article 142 of the Constitution of India as a measure to ensure transparency in the process. This step was also necessitated due to absence of Statutory Rules framed under the Advocates Act. It was an experiment made by this Court to bring about uniformity in approach. An effort was made to make the process more objective. However, this Court was not oblivious of the fact that the guidelines may require changes from time to time. Therefore, in paragraph 74, this Court observed thus:

> "**74. We are not oblivious of the fact that the guidelines enumerated above may not be exhaustive of the matter and may require reconsideration by suitable additions/deletions in the light of the experience to be gained over a period of time**. This is a course of action that we leave open for consideration by this Court at such point of time that the same becomes necessary."
>
> (emphasis added)

57.1 Thus, this Court has given enough indication that what was done under ***Indira Jaising-1*** was not final. The decision itself noted that the need to reconsider the decision may arise in future.

58. ***Indira Jaising-1*** was decided on 12th October, 2017. An endeavour was made by this Court to have a relook at the guidelines laid down in ***Indira Jaising-1*** while deciding ***Indira Jaising-2***. From the decision in the case of ***Indira Jaising-2***, it appears that there was a debate before the Court mainly on the following issues:

(a) Voting by secret ballot;

(b) Cut-off marks;

(c) The points assigned for publications; and

(d) The personal interview

59. This Court made the following modifications in ***Indira Jaising-2***:

(i) Voting by secret ballot will remain by way of exception. In case it is resorted to, the reasons for the same should be recorded;

(ii) Points for publication were reduced from 15 to 5; and

(iii) The points allocated for reportable and non-reportable judgments, *pro bono* work, and domain expertise under various branches of law were increased from 40 to 50.

59.1 Paragraphs 32 to 38 of ***Indira Jaising-2*** decision are relevant which read thus:

> "**32**. The first aspect to be noticed under this head is that of reported and unreported judgments. We deem it fit to clarify that it is not orders (not laying down any proposition of law) but judgments that have to be considered. We say so as judgments ordinarily deal with significant and contested legal issues.
>
> **33**. Here, we ought to also consider the role played by the advocate in the proceedings. In recent times, and particularly in the Supreme Court, the number of advocates present for a matter are very high. However, that is not ipso facto reflective of the assistance that they are providing to the Court. A matter may be argued by a counsel who may be assisted by others, including an Advocate-on-Record. Thus, an assessment would have to be carried out in enquiring into the role played by the advocate in the matter they have appeared in with their role specified by them in their application. Merely looking into the number of appearances would not be enough.
>
> **34**. We believe that this would also take care of any perceived disadvantages arising due to the larger number of appearances by Government Counsel, as compared to counsel who are engaged in private work.
>
> **35**. One suggestion that we are inclined to accept is that while analysing the role of lawyers, the quality of the synopses filed in Court ought to be considered. Synopses can be a useful indicator for assessing the assistance rendered by an advocate to the Court. Candidates should thus be permitted to submit five of their best synopses for evaluation with their applications.

36. Now turning to another aspect under this head, it may be noticed that many specialised tribunals have been set up, and several advocates have concentrated their practice before such tribunals. The specialised tribunals are the National Company Law Tribunal, Appellate Tribunal for Electricity, Appellate Tribunal under the Prevention of Money Laundering Act, 2002, Telecom Disputes Settlement and Appellate Tribunal, Consumer Dispute Redressal Commission, etc. This has led to the opening up of various specialisations, including but not limited to arbitration, telecom, electricity, energy, competition, insolvency, and white-collar crime.

37. Often appeals from those tribunals lie to this Court and, thus, such advocates also appear before this Court, although the frequency of their appearances may be less. Specialised lawyers with domain expertise should be permitted to concentrate on their fields and not be deprived of the opportunity of being designated as Senior Advocates. Thus, in the case of such advocates, a concession is required to be given with regards to the number of appearances. This category of advocates and their expertise is also essential for the advancement of all specialised fields of law.

38. We also believe that due consideration should be given in the interest of diversity, particularly with respect to gender and first-generation lawyers. This would encourage meritorious advocates who will come into the field knowing that there is scope to rise to the top. The profession has seen a paradigm shift over a period of time, particularly with the advent of newer law schools such as National Law Universities. The legal profession is no longer considered as a family profession. Instead, there are newer entrants from all parts of the country and with different

> **backgrounds. Such newcomers must be encouraged**."
>
> (emphasis added)

59.2 In paragraph 51 of ***Indira Jaising-2***, this Court held that the process of improvement is continuous, as we learn from every experience.

60. This Court in ***Indira Jaising-1*** embarked upon the exercise of laying down uniform standard/practice/ procedure/criteria for designation of Advocates as Senior Advocates by this Court and High Courts. In essence, it was an experiment made by this Court, perhaps, only with one object. It was to ensure that every deserving Advocate who satisfies the criteria of Sub-section (2) of Section 16 of the Act gets due consideration resulting in designation as Senior Advocate. Considering the object of the exercise undertaken by this Court, the directions issued in exercise of power under Article 142 were never intended to be final or understood as substitute to Statutory Rules under the Advocates Act. Paragraph 74 of ***Indira Jaising-1*** and paragraph 51 of ***Indira Jaising-2*** clearly contemplate that. This Court will have to make a course correction as expressed in paragraph 74 of ***Indira Jaising-1*** again in exercise of its jurisdiction under Article 142 of the Constitution. The submissions made by the learned Solicitor General of India, appearing for the Secretary General of this Court as well as in his personal capacity, High Courts of Delhi, Karnataka, Madhya Pradesh and Punjab and Haryana, suggest that perhaps the directions issued in ***Indira Jaising-1*** have not worked effectively to achieve the desired objectives.

(C) 100 Point based Overall Assessment – The basis of Decision Making

61. The entire argument revolves around the point-based overall assessment of the Advocates for designation as Senior Advocates. The scheme of ***Indira Jaising-1*** stipulates putting in place a Permanent Committee in this Court and the High Courts. The Chief Justice and the two senior-most Judges will be part of the Permanent Committee along with the Attorney General for India or Advocate General of the State, as the case may be, and another member of the Bar nominated by the other four members of the Permanent Committee. Apart from the Permanent Committee, Permanent

Secretariats were ordered to be established for receiving applications for designation and processing the applications.

62. The Permanent Committee was entrusted with the task of interviewing the applicants and assigning points out of 100 as specified in tabular form in paragraph 73.7 of ***Indira Jaising-1***. The scheme of the directions is that a point-based overall assessment is made by the Permanent Committee. All the names placed before the Permanent Committee, along with the point-based assessment made by the Committee, are placed before the Full Court to take a final decision on designation of an individual Advocate as Senior Advocate. Thus, the scheme is that the Full Court considers the point-based overall assessment made by the Permanent Committee of each applicant who applies for designation and takes a decision. Though the Full Court may not be bound by the point-based assessment made by the Permanent Committee, the assessment made by the Permanent Committee certainly carries weight as it is made by three senior-most Judges and two distinguished members of the Bar. Though the scheme of ***Indira Jaising 1 and 2*** does not confer a power on the Permanent Committee to recommend names, in practical terms, the exercise done by the Permanent Committee of assigning points out of 100 is treated as a recommendation of certain applicants.

(i) Participation of the Members of the Bar in the process of 100 Points based Overall Assessment

63. Sub-section (2) of Section 16 confers prerogative on this Court and High Courts to designate an Advocate as a Senior Advocate. On the administrative side, this Court and the High Courts act in accordance with the decision of the Full Court, consisting of all Hon'ble Judges. By a resolution of the Full Court, in a given case, the decision-making can be delegated to a Committee of Judges. But we wonder how members of the Bar can be a part of the decision-making process under Sub-section (2) of Section 16 by conferring on them the power to assign points to each applicant. From the Statutory perspective, the question troubling us is about the participation of the Advocates in the actual decision-making contrary to Sub-section (2) of Section 16. The observation is made in the contexts of the Statute and not on their desirability or competence to be the Members of the Permanent Committee.

64. The two senior members of the Bar who are part of the Permanent Committee have to interact with the applicants who have applied for designation. The applicants will be their colleagues in the profession. Normally, the two members of the Bar who are members of the Permanent Committee are expected to be of very high standing. Nevertheless, all the applicants have access to them. The learned Attorney General with experience at his command expressed that he is uncomfortable with the idea of interviews. The reason is that he found it embarrassing to ask questions as the applicants were his peers. In any event, the involvement of members of the Bar in the actual decision-making process by the Full Court in terms of Sub-section (2) of Section 16 cannot be supported by law. In short, he has rightly raised an issue of propriety. From what we have seen during the seven and a half years after ***Indira Jaising-1***, perhaps, the involvement of the members of the Bar in the process calls for serious reconsideration. We hasten to add that this is no reflection on the capabilities of the Senior Advocates who have acted as members of the Permanent Committees. The Courts seeking views of senior members of the Bar on some of the applicants is completely different from allowing senior members of the Bar to become a part of the decision-making process of the Permanent Committee. Sub-section (2) of Section 16 may not be averse to allowing consultation by the High Court/this Court with the senior members of the Bar. However, the provision does not allow the participation of the Bar members in the actual decision-making process. The effects of such participation have been brought to our notice across the Bar. Suffice it to say that the participation of two senior members of the Bar will need reconsideration.

(ii) Duration of Practice

65. We have noted that in Sub-section (2) of Section 16, as it existed prior to 31st January, 1974, the criteria was ability, experience and standing at the Bar. After the amendment with effect from 31st January, 1974, the criterion of ability and standing at the Bar remain. What is added is special knowledge or experience in law. The intention of the Legislature, as reflected in the amendment, is that mere experience in the profession cannot be the criterion. Therefore, the experience simpliciter is done away with and replaced by “experience in law”. In the point-based format, 20 points have been provided for practice

beyond 20 years and 10 or more points for 10 to 20 years. There is no doubt that no Advocate can be said to have standing contemplated by Sub-section (2) of Section 16, unless he has spent a sufficiently long time in the profession.

66. There can be many members of the Bar who have a long presence in the profession. There are many members of the Bar who continue to practice for a long time, though their appearances are minimal. Only the number of years spent in practice cannot be a major criterion for designation by any stretch of imagination. Let us test with an example i.e. a member of the Bar, who has not performed or is not up to the mark, can get 20 points out of 100 only on the ground that he or she has continued to be a member of the Bar for more than 20 years. Therefore, in our view, assigning points on the basis of experience in terms of the number of years is something which will require reconsideration as it does not serve the object sought to be achieved by this Court. Moreover, the length of practice cannot be a rational criterion. On the contrary, it will help those who do not deserve designation as they will get points on the basis of the number of years in practice.

(iii) Interview or Interaction

67. Now, we come to the interview or interaction of the Permanent Committee with the Advocates applying for designation. The question is whether an Advocate, who by virtue of his ability and standing at the Bar deserves designation, can be subjected to an interview by the Permanent Committee. When we posed this query to Ms. Indira Jaising, Senior Advocate, she fairly stated that while she argued ***Indira Jaising-1***, she never suggested that there should be a requirement of an interview or interaction with the applicants.

68. The designation of an Advocate as a Senior Advocate is different from making an appointment to the post. The question is whether it is fair to assess personality and suitability only on the basis of a brief interview for a few minutes, and whether the Permanent Committee can assess personality and suitability by assigning points out of 25, which again constitute 1/4th of the total points. Interaction or interview for a few minutes by any standard is not sufficient to assess the personality and suitability of the concerned Advocate. Such brief interactions can at best give an outer view of the applicant. The

points out of 25 have to be assigned by assessing personality and suitability only on the basis of the applicant's performance in the interview. Hence, if someone is impressive in an interview, he or she can get very good marks even if his or her general reputation is not up to the mark.

69. After ***Indira Jaising-1***, this Court and High Courts have conducted a number of exercises for designating Advocates as Senior Advocates. In many such processes, there were more than 100 applicants. It may be appropriate, on this background, to ask a difficult question to ourselves whether the Permanent Committees devoted sufficient time to each applicant for assessing personality and suitability. We do not think there will be any serious disagreement on the obvious answer.

70. It is not out of place to observe that subjecting an Advocate having standing at the Bar to interview by three senior-most Judges and two senior members of the Bar violates the dignity of the noble profession.

(iv) Reported and Unreported Judgments, Pro Bono Work and Domain Expertise/Experience

71. The Advocates who apply for designation submit a number of reported and unreported judgments indicating the legal formulations advanced by them in the course of proceedings before the Court. In ***Indira Jaising-2***, this Court expressed that even the written submissions or synopses filed by the Advocates should be considered for assigning points out of 50 points. The applicants are submitting a large number of Judgments and copies of written submissions/ synopses running into hundreds of pages. It is very difficult to assess whether the submissions recorded in the Judgments are made by that particular Advocate, even if his name appears in the Judgment, unless the judgment specifically mentions that a particular submission was made by the named Advocate. Similarly, written submissions filed may not be a product of an individual effort, but may be a collective effort by a team of Advocates. It is not possible to accept that the Permanent Committee is in a position to come to the conclusion that the submissions reflected in the Judgments and written submissions/synopsis are the submissions made by the applicant concerned, so as to assign points out of 50, which constitute ½ of the total points.

72. Three senior-most Judges of this Court or High Courts have onerous duties to discharge not only on the judicial side, but, on the administrative side as well. They have to devote hours together to administrative work. If they are required to assign points out of 50 on the basis of Judgments and written submissions, we wonder how many working hours will be required to go through the documents submitted by individual Advocates. We made a query to the learned Attorney General for India whether he could find time to go through so many judgments as well as publications submitted by the applicants. In his usual fairness, he was candid enough to tell the Court that the exercise was very difficult and tiring or may not be to the extent needed. We cannot say that the members of the Committee are able to go through every document. Moreover, this makes the process very subjective. A suggestion was made that this exercise can be outsourced to the Registrars/Centre for Research and Planning (CRP). We do not think that this important work can be outsourced to any entity or group of individuals.

(v) Publications

73. If an Advocate has authored articles or a thesis on complex legal issues or has published books on legal subjects to his credit, depending upon the quality of writing, it adds to the standing of the Advocate. However, it will be unjust to give weightage to such work done by the Advocate by assigning points out of 5. Writing articles or books is not an essential criterion for designation. It is an additional consideration.

74. The experience of the last seven and a half years shows that it may not be rationally or objectively possible to assess calibre, standing at the Bar, and the experience in law of the Advocates who apply for designation on the basis of a point-based format. That has not achieved the desired objective. There is another important aspect which is relevant. No specific points have been assigned for the character, honesty and integrity. The point-based assessment, as can be seen from the earlier discussion, can hardly be objective, and it tends to be highly subjective.

(D) Reconsideration in terms of Paragraph 74 of Indira Jaising-1 and paragraph 51 of Indira Jaising-2

75. We have already held in paragraph 60 that considering the object of the exercise undertaken by this Court, the directions issued in

Indira Jaising-1 and 2 were never intended to be final. ***Indira Jaising-1*** specifically records need for reconsiderations by suitable additions/deletions in the light of the experience to be gained over a period of time. Even ***Indira Jaising-2*** reiterates this position and holds that the process of improvement is continuous, based on our experience. What we have held in earlier paragraphs shows that the system of 100 point-based assessment has not achieved the desired objectives. Moreover, the experience shows that the points-based assessment is not flawless. We have realized that with experience. Therefore, paragraph 73.7 deserves deletion in exercise of powers reserved in paragraph 74 of ***Indira Jaising-1*** read with paragraph 51 in ***Indira Jaising-2***. When we do this, it will not amount to review or recall of the decisions. After finding that the point-based assessment is not workable, we will be failing in our duty if we fail to do what we are expected to do in the light of paragraph 74 of ***Indira Jaising-1***.

(E) Judges Recommending Candidates

76. On plain reading of Sub-section (2) of Section 16, the Legislature never contemplated an Advocate making an application seeking designation. The scheme of Sub-section (2) of Section 16 indicates that designation has to be conferred by the Supreme Court or the High Courts. The scheme of Sub-section (2) of Section 16 indicates that an individual Judge of the Supreme Court or the High Court, as the case may be, cannot recommend any Advocate for designation as the decision is a collective decision of the Full Court. Even if an Advocate deserving of a designation does not apply for designation, on the basis of the discussion in the house, the Full Court can always recommend his/her designation, subject to his/her consent. For that purpose, the recommendation in writing of an individual Judge is not warranted.

(F) Whether Applications for Designations are warranted

77. Obviously, this Court or the High Court cannot designate any Advocate as a Senior Advocate without his consent. The strength of the Bar is ever-increasing. Therefore, it would practically not be possible to seek the consent of a large number of deserving Advocates. Therefore, the practice of making a formal application can be continued. An Act of making application will amount to consent of the Advocate for being

considered for designation. Act of making such applications may not necessarily amount to soliciting the designation. The practice of allowing applications to be made has practical advantages. The educational qualifications, experience in law, field of practice, income, *pro bono* work, work of mentoring juniors, articles and books, writing publications, etc., are relevant in the process of designation. Instead of the Court's Registry calling for these details, it becomes more convenient if the Advocates furnish the details along with their applications. We, therefore, find no difficulty in continuing the practice of Advocates applying for designation. In view of what we have held earlier, a deserving Advocate who does not apply can be always be designated after obtaining his consent.

(G) Diversity and Inclusivity in the Process

78. Ms. Indira Jaising is absolutely correct when she candidly submitted that the designation cannot be the monopoly of the selected few. She submitted that diversity is of great deal of importance. All members of the Bar who belong to different classes must get equal opportunity in the matter of designation. It is important to encourage first-generation Advocates. She is right in submitting that the process of designation must be objectively fair and guided. For that purpose, there is a need to have at least one exercise of designation conducted every year.

79. When we talk of diversity, we must ensure that the High Courts evolve a mechanism by which the members of the Bar practicing in our Trial and District Judiciary and before specialised Tribunals are considered for designation as their role is no inferior to the role played by Advocates practicing before this Court and High Courts. This is also an essential part of diversity. The High Courts can always call for the views of the Principal District Judges or the Heads of the Tribunals on such applicants. Moreover, when the cases of the Advocates practicing in District Courts are considered, the views of the Guardian/Administrative Judges of the concerned District are always available.

(H) Income and Minimum Practice

80. Another question is whether a number of years of practice or minimum income should be a criterion. It all depends on the situation in every State. If a condition of minimum income is introduced, the process will cease to be inclusive. Income is one of the several

factors to be considered. The requirement of a minimum practice of 10 years should be retained as the standing at the Bar can be assessed only if the Advocate has practiced for a reasonably long time.

(I) Secret Ballot

81. Another contentious issue is whether there should be a secret ballot in the Full House. In Full Court meetings, there is always an endeavour made to bring about consensus in decision-making on all subjects. But, where consensus cannot be arrived at notwithstanding best efforts, the decision-making must be in a democratic manner by majority vote. There cannot be any hard and fast rule laid down that the secret ballot should never be resorted to. It all depends on circumstances. Therefore, the question whether there should be a secret ballot must be left to the wisdom of the Full Court. But the decision-making on designation, as far as possible, should be by consensus. If that is not possible, the decision-making must be by a democratic process and shall be governed by a majority of votes.

(J) Practice of Senior Advocates using a Special Gown

82. Another issue raised by Ms. Indira Jaising was that the practice of designated Senior Advocates using different type of gowns has no basis in the Advocates Act. Therefore, according to her, this practice deserves to be discontinued. It is for the High Courts to take a call on this aspect while framing rules.

(K) Need to frame proper Rules

83. Even in the absence of a specific provision under the Advocates Act, this Court and High Courts, being the Constitutional Courts, have a power to frame rules. The power of this Court can be traced to Article 145(1)(a). The High Courts can exercise power under Article 227(2)(b). It is necessary that proper Rules must be framed dealing with the entire process of designating Advocates as Senior Advocates. The object of the rules must be to bring objectivity, transparency and fair play in the entire process. The rule making power in this behalf can also be traced to Sub-section (1) of Section 34 of the Advocates Act which reads thus:

> **"Section 34: Power of High Courts to make rules.**
>
> The High Court may make rules laying down the conditions subject to which an advocate shall be permitted to practise in the High Court and the courts subordinate thereto."

84. The grassroots level situation in each High Court differs. High Courts have their own traditions. Therefore, it should be best left to the High Courts to frame rules in the light of the principles laid down in this decision. While framing rules, this Court and the High Courts must undertake a detailed process of consultation with the Advocate General, senior members of the Bar, office bearers of the Bar Associations and the members of the State Bar Council. Even the members of the Bar owe a duty to ensure that only deserving Advocates get designation, and therefore, their suggestions must be given importance in the process of framing rules. The Rules must take into consideration several contingencies. There are cases where after the request for designation is rejected by one High Court, the candidate approaches this Court or another High Court. The Rules can provide for prohibition on applying for a certain period after rejection of earlier application. The Rules can provide for the form of application, required documents etc.

(L) Permanent Secretariat

85. We, however, are of the view that the Permanent Secretariat, as proposed in ***Indira Jaising-1***, must continue to exist for processing applications, as the collection of data is very important for the correct decision-making process. While framing Rules, a proper framework can be provided for the working of the Permanent Secretariat and its duties.

(M) Need to Periodically Review the Procedure

86. The view which we have taken will be again subject to what is observed in paragraph 74 of the decision in the case of ***Indira Jaising-1*** and paragraph 51 of the decision in the case of ***Indira Jaising-2***. Looking to the very nature of the process of designation, it is very difficult to arrive at a perfect system. We learn from our experience and the mistakes committed in the past. Therefore, the endeavour of all stakeholders should be to keep on improving the

system, so that we may ensure that not a single deserving Advocate is left out of the process of designation and not a single undeserving person is designated.

CONCLUSIONS

87. We, therefore, pass following orders:

(i) We direct that the directions contained in paragraph 73.7 of ***Indira Jaising-1*** as amended by ***Indira Jaising-2*** shall not be implemented;

(ii) It will be appropriate if all the High Courts frame Rules in terms of what is held in this decision within a period of 4 months from today by amending or substituting the existing Rules. The Rules shall be made keeping in view the following guidelines:

(a) The decision to confer designation shall be of the Full Court of the High Courts or this Court;

(b) The applications of all candidates found to be eligible by the Permanent Secretariat along with relevant documents submitted by the applicants shall be placed before the Full House. An endeavour can always be made to arrive at consensus. However, if a consensus on designation of Advocates is not arrived at, the decision-making must be by a democratic method of voting. Whether in a given case there should be a secret ballot, is a decision which can be best left to the High Courts to take a call considering facts and circumstances of the given case;

(c) Minimum qualification of 10 years of practice fixed by ***Indira Jaising-1*** needs no reconsideration;

(d) The practice of Advocates making applications for grant of designation can continue as the act of making application can be treated as consent of the Advocates concerned for designation. Additionally, the Full Court may consider and confer designation *dehors* an application in a deserving case;

(e) In the scheme of Section 16(2), there is no scope for individual Judges of this Court or High Courts to recommend candidate for designation; and

(f) At least one exercise of designation should be undertaken every calendar year.

(iii) The processes already initiated on the basis of decisions of this Court in the case of ***Indira Jaising-1*** and ***Indira Jaising-2*** shall continue to be governed by the said decisions. However, new process shall not be initiated and new applications shall not be considered unless there is a proper regime of Rules framed by the High Courts;

(iv) It is obvious that even this Court will have to undertake the exercise of amending the Rules/Guidelines in the light of this decision; and

(v) Every endeavour shall be made to improve the regime/system of designation by periodically reviewing the same by this Court and the respective High Courts.

88. Before we part with the judgment, we must compliment each and every member of the Bar who has assisted us. We must acknowledge the huge contribution of Ms. Indira Jaising, Senior Advocate in the entire process. She must be given full credit for starting a constructive debate on the issue. We hope and trust that her endeavour of bringing about objectivity and transparency in the process of designation succeeds.

89. The issues referred are answered accordingly.

90. IA No. 45959 of 2022 in IA Dy Nos. 145730-31 of 2021 in MA No. 1502 of 2020 in WP (C) No. 454 of 2015 is allowed. IA Dy Nos. 145730-31 of 2021, IA No. 55879 of 2023 in MA No.1502 of 2020 and IA No. 36111 of 2023 in MA No. 262 of 2023 are allowed and disposed of in terms of the above judgment.

Result of the case: Reference answered.

†*Headnotes prepared by:* Harshit Anand, Hony. Associate Editor
(*Verified by:* Kanu Agrawal, Adv.)