

S.P. GUPTA VS. UNION OF INDIA¹

S.P. Gupta versus Union of India is a significant case that revolves around the separation of powers among organs of government and the intervention made by the Executive regarding the appointment of Judges. The case dates back to 1981 and is popularly known as the First Judges Transfer Case, which started the process of the establishment of the collegium system for the appointment of judges.

The case is related to a circular letter addressed by then Law Minister P. Shiv Shankar to the Governor of Punjab and the Chief Ministers of States regarding appointments and transfer of Judges. The letter stated that to ensure national integration, one-third of judges should be appointed from outside of the state in which the High Court is situated. Various lawyers filed writ petitions challenging the circular as it was seen as excessive executive interference in the appointment of judges, undermining the role of the judiciary. S.P. Gupta, an advocate at the Allahabad High Court, filed a writ petition challenging the constitutional validity of the circular. Various other petitions were also filed in different High Courts, which were clubbed together under S.P. Gupta versus Union of India. These petitions challenged the temporary appointments as well as the extensions being given to various Additional Judges. These judges, according to the petitioner, should have been appointed by now as permanent judges.

Articles 124 and 217 of the Indian Constitution list down the provisions related to the appointment of Judges in the High Court and the Supreme Court. According to these articles, the appointment of Judges should be done by the President by 'consultation' with the Council of Ministers, the Chief Justice of India or other authorities. The petitioner in this case argued for the disclosure of the necessary documents and the exchange that took place regarding the appointment of Judges at various High Courts between the Law Minister and the CJI of the Supreme Court. The respondent, however, challenged the petition, arguing that the circular of the Law Minister does not violate any legal provision or constitutional rights of the petitioners.

Question of Law

The major question of law in this case was regarding the distribution of power among the various organs of government. Though the circular did not violate any law, it was seen by petitioners as harming the independence of the judiciary in matters of appointment. The court had the question to decide the validity of the circular and the role of the executive in appointments. It also faced the question of whether the disclosure of exchanges between the CJI and the Law Minister should be made.

¹ AIR 1982 SUPREME COURT 149

Judgment

The court, in its Judgment, stated that the circular and the appointment of Judges can be challenged only on two grounds- if effective 'consultation' is not taken from the higher authorities, or the decision did not have any reasonable grounds. The court would decide the disclosure of exchanges on these two grounds. The court held that the present case deals with the appointment and transfer of Judges and thus the correspondence between the Law Minister and the Judiciary should be disclosed. The disclosure cannot be made only if the matter is of pivotal interest and affects the sovereignty and security of the nation. In this case, the disclosure is not of vital importance. Transparency, it stated, is a key to a healthy democracy, and thus these exchanges should be disclosed for public interest. Right to know, it argued, is implicit in the right of free speech and expression.