

GOVERNMENT OF INDIA
MINISTRY OF LAW AND JUSTICE
DEPARTMENT OF JUSTICE
RAJYA SABHA
UNSTARRED QUESTION No. 2512
ANSWERED ON THURSDAY, THE 10.08.2023

Establishment of High Court Benches in the country

2512 Dr. Sasmit Patra:

Will the Minister of LAW AND JUSTICE be pleased to state:

- (a) the view of the judiciary in India towards establishment of High Court Benches with reference to specific judgements/observations by the judiciary;
- (b) whether Jaswant Singh Commission's recommendations and judgement pronounced by the Apex Court in WP(C) No. 379 of 2000 are contradictory to each other, if so, view of Government thereto; and
- (c) whether the Constitution of India through Entry 78 of Union List provides powers to Government for constitution and organization of High Courts, if so, whether Government would be willing to use this power to establish High Court Benches in the country?

ANSWER

MINISTER OF STATE (INDEPENDENT CHARGE) OF THE MINISTRY OF LAW AND JUSTICE; MINISTER OF STATE IN THE MINISTRY OF PARLIAMENTARY AFFAIRS; AND MINISTER OF STATE IN THE MINISTRY OF CULTURE

(SHRI ARJUN RAM MEGHWAL)

(a) to (c): Article 214 of the Constitution of India provides that there shall be a High Court for each State. Section 51 of the States' Reorganization Act, 1956 provides for setting up of Principal seat and other places of sitting of High Courts for new States and states that (1) The principal seat of the High Court for a new State shall be at such place as the President may, by notified order, appoint and (2) The President may, after consultation with the Governor of a new State and the Chief Justice of the High Court for that State, by notified order, provide for the establishment of a permanent bench or benches of that High Court at one or more places within the State other than the principal seat of the High Court and for any matters connected therewith.

In 1981, the Government of India had appointed a three-member commission headed by Justice Jaswant Singh, a retired Judge of Supreme Court, to consider all aspects arising out of the demand for the constitution of the Bench for the Western districts of Uttar Pradesh. The terms of reference of the

Commission were enlarged in 1983 requiring the Government to examine and report on all aspects of general question of having Benches of High Courts at places other than their principal seats and on the broad principles and criteria to be followed in this regard.

Justice Jaswant Singh Commission had recommended some broad principles and criteria to be followed while deciding the question of expediency and desirability of establishment of a Bench of a High Court away from the principal seat, and factors to be borne in mind while selecting the site of a Bench. Some of the key requirements which must be satisfied before such a request is considered, inter-alia include that the area demanding a Bench must possess characteristics of a region and, thus, must have sizeable population and area to justify such a requirement. The other factors which must also be taken into account are means of travel and communication, distance litigant public has to travel for filing cases in the High Courts, pendency at the principal seat of the High Court, availability of infrastructure, availability of members of Bar as well as the legal talent etc.

The Supreme Court, in the Writ Petition (Civil) No.379 of 2000, examined the issue related to demand for establishment of High Court Benches at centres different from the principal seat, when a petition was filed by the Federation of Bar Association in Karnataka. The Supreme Court, in its judgment dated 24th July, 2000 stated that "...The question of a bench of High Court away from the principal seat of the High Court is not to be decided on emotional or sentimental or parochial considerations. The High Court is the best suited machinery to decide whether it is necessary and feasible to have a bench outside the principal seat of that High Court. If the High Court does not favour such establishment, it is pernicious to dissect a High Court into different regions on the ground of political or other considerations. So, it is out of question to decide for establishment of a bench outside the principal seat of a High Court contrary to the opinion of the Chief Justice of that High Court which has been formed after considering the views of the colleague Judges"

The Supreme Court also held "...As the Chief Justice of the High Court concerned is the important consultee in the matter of establishment of a bench of the High Court, he being the head of that High Court he has to form an opinion when it is required during such consultation process. Normally, the Chief Justice will not be guided by any political or parochial considerations. When he gives the opinion, it is the opinion of the High Court and not merely his personal opinion...."

The proposal of setting up of Benches of a High Court is considered by the Government of India only after receipt of a complete proposal from the State Government which has to have the consent of the Chief Justice of the concerned High Court and the Governor the State. The State Government has to provide necessary infrastructural facilities for establishment of a Bench of the High Court away from its principal seat as well as the entire expenditure of the High Court and its Bench. The Chief Justice of the High Court is required to look after the day-to-day administration of the High Court and its Bench and depute Judges from the Principal Seat to Bench from time-to-time. It is, therefore, necessary that both the State Government and the High Court consider the matter from all angles and arrive at a consensus.

The Government has adopted a consultative approach requiring consensus among the State Government and the High Court concerned in deciding the issue of setting up Benches of High Courts.
