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W.P(Crl.)No. 197-198 OF 2004  
ITEM NO.301 [PART-HEARD]COURT NO.5SECTION PIL  
A/N MATTER

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

WRIT PETITION [CRL.] NOS. 197-198 OF 2004

Rajiv Ranjan Singh 'Lalan' & Anr.

... Petitioners

Versus

Union of India & Ors. ... Respondents

(With appln.(s) for permission to file additional affidavit and c/delay in filing rejoinder and permission to file additional affidavit and clarification/direction and office report)

Date : 10/05/2005 These Petitions were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE S. N. VARIAVA  
HON'BLE DR. JUSTICE AR. LAKSHMANAN  
HON'BLE MR. JUSTICE S.H. KAPADIA

For PetitionersMr. Mukul Rohtagi, Sr. Adv.  
Mr. Kailash Vasdev, Sr. Adv.  
Mr. Saurabh Kripal, Adv.  
Mr. Gopal Singh, adv.

For Respondent Nos.Mr. Ram Jethmalani, Sr. Adv.  
4 & 5Mr. C. R. Sinha, Adv.  
Mr. B. B. Singh, Adv.

For Respondent Nos.Mr. G. E. Vahanvati, SG  
1-3 (UOI)Mr. Mohan Parasaran, ASG  
Ms. Sandhya Goswami, Adv.  
Mr. P. Parmeswaran, Adv.  
Mr. B. V. Balaram Das, Adv.

UPON hearing counsel the Court made the following  
O R D E R

On 26th April 2005 we had passed an Order, the relevant portion of which reads as follows:

"Mr. Rohtagi applies and the learned Solicitor General and Mr. Jethmalani support him that this Court directs appointment of a Bench to hear Criminal Miscellaneous Nos.14895 of 2000 and 14894 of 2000. The Acting Chief Justice of the Patna High Court is therefore requested to constitute a Bench consisting of Mr. Justices Aftab Alam and Chandramauli Kumar Prasad to hear Criminal Miscellaneous Nos.14895 of 2000 and 14894 of 2000. The Bench is requested to dispose of these matters finally as early as possible and in any case within a period of one month from today."

This portion of the Order was passed by consent of all the parties. Now it is claimed by the Applicant in Crl. M. P. Nos. 5519-5520 of 2005 that the Order is not by consent. However, even in this application it is admitted that his counsel had not objected to this Order. After consenting and/or in any case after not objecting submissions are made before learned Acting Chief Justice of the Patna High Court that this Court had no jurisdiction to constitute a Bench and that power to constitute Benches rests only with the Chief Justice. We deprecate this practice of a party obtaining an Order by consent and/or not objecting to an Order and then making contrary submissions before another Forum. If the party had felt aggrieved the proper course was to immediately come back to this Court and get the Order clarified by this Court. As a contention is now raised, before the learned Acting Chief Justice, that this Court could not constitute a Bench, we clarify that the Order reproduced above was at the behest of and with consent of all the parties. This Court had only requested the learned Acting Chief Justice to constitute a Bench. Undoubtedly the prerogative to constitute a Bench is with the Acting Chief Justice and the above Order in no way expresses any lack of confidence in the Acting Chief Justice nor takes away his prerogative to constitute the Bench. We, however, wish to clarify that the constitution of a Bench is an administrative function to

be performed by the Chief Justice. In constituting the Bench the parties are not to be heard . The parties have no say in such matters at this stage.

We, therefore, with the above clarification request the learned Acting Chief Justice to constitute a Bench to hear these cases. In view of the fact that the vacations are fast approaching we request the Acting Chief Justice to constitute a Bench within a period of two days from the date of receipt of a copy of this Order. The Bench then to take up these matters forthwith for hearing on a day-to-day basis and to endeavour to dispose of these matters before the ensuing vacations. All concerned parties expressly consent to these directions and state that they shall proceed with those cases. In other words, no party will ask for or be granted any adjournment.

Copies of the Report received from the President, Income Tax Appellate Tribunal to be given to all the parties to these proceedings, who apply for the same.

Learned Solicitor General is granted time to produce documents as per our last Order and to inform this Court as to what decision the Government is going to take regarding filing of Appeal .

List on 25th July, 2005.

(K.K. Chawla)(Jasbir Singh)  
Court Master

Court Master