

# **‘Unhappiness’ over NJAC behind govt delay on Collegium recommendations; govt needs to follow the law of the land: Supreme Court**

**Supreme Court had struck down the National Judicial Appointments Commission, which gave the government an equal say in judicial appointments to the constitutional courts, in 2015**

The Supreme Court on November 28 linked the bitter failure of the National Judicial Appointments Commission (NJAC) to the government’s willingness to “cross some Rubicons” and take on the judiciary by delaying Collegium recommendations.

The Supreme Court had struck down the NJAC, which gave the government an equal say in judicial appointments to the constitutional courts, in 2015. The judgment had revived the Collegium system of judicial appointments.

“There appears to be an unhappiness in the government of the fact that NJAC did not muster the constitutional mandate... That cannot be the reason to not comply with the law of the land,” a Bench of Justices Sanjay Kishan Kaul and A.S. Oka.

The hearing coincided with a fresh salvo from Law Minister Kiren Rijiju, a relentless critic of the opacity of the Collegium system, aimed at the Supreme Court. Mr. Rijiju, in an interview, reportedly dared the judiciary to “issue its

own notifications” of appointments if it thought the government was sitting on Collegium recommendations.

“Let them give the power to us then, we have no difficulty... When somebody high up says ‘let them do it’, we will do it ourselves... This [Rijiju’s remarks] came from somebody high enough, it should not have,” Justice Kaul shot back when apprised of the Law Minister’s comments by Supreme Court Bar Association president, senior advocate Vikas Singh, in court.

The hearing on Monday marked a new high in the tensions simmering for the past few weeks between the judiciary and the government over appointments. Mr. Rijiju has been criticising the Collegium system in several public fora, mentioning how the NJAC could have provided a transparent alternative.

The Supreme Court had responded by accusing the government, in a judicial order, of using silence and inaction as a ploy to compel the withdrawal of consent by eminent persons considered for judgeships in the constitutional courts.

The Constitution Day-eve function had seen Chief Justice D.Y. Chandrachud make a pointed remark that judiciary and government would not be able to work together to appoint good judges if they spent time finding fault in each other.

On Nov. 28, Justice Kaul told Attorney General R. Venkataramani that the government was “effectively frustrating the method of appointment”. Names have been pending for a year and a half. Some of them had been originally recommended way back in 2019 and still not cleared by a government which remains incommunicado.

The court accused the government of picking and choosing names from the Collegium list. “What happens is this completely destroys the seniority. The Collegium while sending names keeps many factors in mind,” Justice Kaul said.

The court said it was plainly “anguished” by the government’s attitude.

“It [government] is crossing some Rubicons by keeping these names pending like this... It cannot go on like this... We went on thinking that things will improve, that it will improve... But for the past two months, everything has come to a complete standstill, whether it is appointments to the High Courts or to the Supreme Court,” Justice Kaul observed.

The court said 20% of the judicial posts in High Courts were vacant. Justice Kaul, who is the second senior-most Supreme Court judge and a Collegium member, said Chief Justices of several High Courts have complained about lawyers unwilling to accept invitations to the Bench because of the uncertainty posed by the government’s inaction.

Mr. Singh said the court should issue contempt notice against the government.

“There is no need to be rhetorical,” the AG snapped.

“What rhetorical? Are you saying following the law of the land is rhetoric?” Mr. Singh asked.

“We kept our patience today because the AG appeared... Timelines [for judicial appointments] have gone completely haywire, there have been many aggravating circumstances after that... Don’t make us take decisions on the judicial side on this,” Justice Kaul and Oka told Mr. Venkataramani.

Mr. Venkataramani said he had discussed the issue at the Secretary level, but had questions for which he had to go higher up in the government. He sought more time.

“When things need to move, they move in a day. When things don’t need to move, they don’t move for months,” Justice Kaul reacted.

The Bench told Mr. Venkataramani and Solicitor General Tushar Mehta, who was present at the hearing, to “advise the government to follow the law of the land”.

“If the government itself says ‘I will not adhere to the law of the land’, tomorrow somebody else may say this about another law... You must look at the larger picture,” Justice Kaul told Mr. Venkataramani.

The court scheduled the case for December 8.