
(1993) 07 P&H CK 0091

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 8053 of 1993

Joginder Singh Toor and another

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 20-07-1993

Acts Referred:

Constitution of India, 1950 — Article 100, 105, 99
Judges (Inquiry) Act, 1968 — Section 3(2)

Citation : AIR 1994 P&H 35 : (1994) 106 PLR 121

Hon'ble Judges : S.D. Agarwala, C.J.;Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : Mr. H.S. Gill and Mr. Joginder Singh Too, for the Appellant;

Judgement

S. D. Agarwala, C. J.—The petition has been filed by two Advocates of this Court. Briefly, the facts giving rise to this petition, are as follows :--

Justice V. Ramaswami, a judge of the Madras High Court was transferred to this Court and was appointed as Chief Justice of this Court. He assumed charge as Chief Justice on 12th of November, 1987 and remained Chief Justice of this Court till 6th of October 1989 when he was elevated as a Judge of the Supreme Court of India.

2. On 27th of February 1991, a notice of motion signed by Prof. Madhu Dandavate and 107 members of the Lok Sabha was submitted to the Speaker for presenting an address to the President of India for removal of Justice V. Ramaswami from the office of the Judge of the Supreme Court of India under Arts. 124 sub-clause (4) of the Constitution of India read with S. 3 of the Judges (Inquiry) Act, 1968. The Speaker of the Lok Sabha after considering the notice of motion mentioned above, admitted the notice; and in pursuant to sub-section (2) of S. 3 of the Judges (Inquiry) Act, 1968 the then Speaker, constituted for the purpose of making an investigation into the grounds on which the removal of Justice V. Ramaswami was prayed for, a Committee, consisting of Mr. Justice P. B. Sawant, a Judge of the Supreme Court of India as a Presiding Officer; Mr. Justice

P. D. Desai, Chief Justice of the High Court of Bombay and Mr. Justice O. Chinnappa Reddy, former Judge, of the Supreme Court of India.

3. On 20th of July 1992, the Committee appointed by the Speaker submitted its report against Mr. Justice V. Ramaswami and it found certain charges having been proved against him.

4. The notice of motion as contemplated under Art. 124(4) of the Constitution of India for removal of Justice V. Ramaswami from his office as a Judge of the Supreme Court of India was taken into consideration by the Lok Sabha on 10th of May, 1993. Ultimately after discussion voting took place in the Lok Sabha and the final result was that 196 votes were cast for the motion and no vote was cast against the motion. The motion was thereafter dropped as the requisite majority required under Art. 124(4) of the Constitution of India was not obtained. The question which arises for consideration in the present petition is the interpretation of clause (4) of Art. 124 of the Constitution of India which reads as follows :--

"124(4) A Judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two thirds of the members of that House present and voting has been presented to the President in the same Session for such removal on the ground of proved misbehaviour or incapacity."

5. From the reading of the abovementioned Article, it is clear that a Judge of the Supreme Court can be removed only by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two thirds of the members of that House present and voting has been presented to the President in the same Session for such removal on the ground of proved misbehaviour or incapacity. The motion of removal of a Judge of the Supreme Court of India has to be supported by a majority of total membership of the House and by a majority of not less than two thirds of the members of the House present and voting. Merely a majority of the total membership of the House is not sufficient but there must also be a majority of not less than two thirds members of that House present and voting. Both the conditions precedent must exist before notice of motion for removal of a Judge of the Supreme Court of India could be deemed to have been passed by the Lok Sabha.

6. In the instant case, it is not disputed that there are 530 members of the Lok Sabha. Out of the members of the Laic Sabha, only 196 are in favour of the motion and consequently the motion cannot be said to have been passed as provided under Art. 124(4) of the Constitution of India quoted above. The result of the proceedings of the Lok Sabha has been that the notice of motion for removal of Justice V. Ramaswami stands dropped by the Lok Sabha.

7. The present petition has now been filed for a relief that the Speaker of the Lok

Sabha be directed to identify those members of Parliament, who have abstained from voting on the notice of motion for presenting an address to the President for the removal of Justice V. Ramaswami under Art. 124(4) of the Constitution of India on 11th of May, 1993 the day when the motion was put to vote in the House, as the proceedings recorded does not reveal the names of the persons who abstained from voting and thereafter to initiate proceedings against them for their removal from membership of the Lok Sabha. In the alternative, it is prayed that the motion be declared as passed since abstention by the members of the Lok Sabha amounts to tacit approval by them and directing the Speaker to present the address to the President of India for the removal of Justice V. Ramaswami and also for a direction that the Speaker of the Lok Sabha be directed to reconvene the house to vote on the motion for and against the removal of Justice V. Ramaswami.

8. The petitioners have urged that the functions of the members of the Lok Sabha under Art. 124 sub-clause (4) of the Constitution of India are judicial in nature and consequently they have no right to abstain from voting. It has been further urged that since the functions under Art. 124 sub-clause (4) of the Constitution of India are judicial in nature, no party can issue a whip to its members to abstain from voting and this action of the Congress party is without authority and consequently impermissible in law. The last argument raised on behalf of the petitioners is that the members who abstained from voting have acted against their oath and consequently they are liable to be removed from the membership of the House.

9. In support of the arguments, the petitioners have relied upon a passage from the constitutional law of India by H. M. Seervai. II Edition paragraph 18.8. They have in particular relied upon the following sentence used in the paragraph.

"An address to the Crown for the removal of a judge must originate in the House of Commons; the procedure is judicial and the judge is entitled to be heard."

It is on this basis that it has been urged that the members of the Lok Sabha who were present for consideration of the notice of motion for the removal of the Judges were to exercise judicial functions and as such they were duty bound to express their opinion on the motion and they had no power to abstain from expressing their opinion in regard to the motion. In our opinion the argument of the petitioners is wholly fallacious. In proceedings in regard to the removal of a Judge, from the passage quoted above from the Constitutional Law of India by H. M. Seervai it can only be inferred that when the matter is being considered by the Lok Sabha, the procedure is judicial and the judge concerned is entitled to be heard. But from that expression it cannot be said that it should be held that a member of the Lok Sabha exercises judicial functions.

10. From a reading of clause (4) of Article 124 of the Constitution of India, it is clear that a notice of motion for removal of a Judge has to be supported by a majority of the total membership of that House and by a majority not less than

two thirds of the members of that House present and voting. No provision has been cited before us to show that it is incumbent upon every member of the Lok Sabha to vote and that he has no right to abstain from voting. In our opinion, once a member of the Lok Sabha is present in the House when a notice of motion is being considered for removal of a Judge, it is always open to him either to vote for or against the motion or abstain from voting. We do not find any illegality on the part of the member of the Lok Sabha in abstaining from voting at the time when notice of motion for removal of Justice V. Ramaswami was being considered by the Lok Sabha.

11. In regard to the question of issuance of a whip, there is nothing on the record to establish that in fact a whip was issued by the Congress party asking its members to abstain from voting. In the circumstances, it is not necessary for us to consider in further detail the second submission made by the petitioners. The petitioners have only relied upon the press reports. In the absence of positive evidence, no reliance can be placed on the press reports that a whip had been issued to the members of the Lok Sabha belonging to the Congress party to abstain from voting. As said above, even if the members of the Congress party abstained from voting, they were not duty bound to vote under the Constitution and as such their action of abstention cannot be said to be contrary to the Constitution.

12. In regard to the third submission reliance has been placed on the form of the oath stated in the Third Schedule of the Constitution of India. The oath of a member of the Lok Sabha is in the following terms :--

"I.A.B. having been elected (or nominated) a member of the Council of States (or the House of the People) do swear in the name of God that I will bear true faith and allegiance to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India and that I will faithfully discharge the duty upon which I am about to enter."

In the abovementioned oath taken by each and every member of the Lok Sabha, the oath is to the effect that he will bear true faith and allegiance to the Constitution of India as by law established and that he will uphold the sovereignty and integrity of India and that he will faithfully discharge the duty upon which he is about to enter. In the oath, it is not stated that every time when a member of the Lok Sabha takes part in the proceedings of the Lok Sabha, he must vote either for or against and cannot abstain from voting. In this view of the matter, it cannot be said that the member of the Lok Sabha who abstained from voting acted against their oath.

13. We do not find any merit in this petition which is accordingly dismissed in limine.

14. Petition dismissed.