

(2011) 07 SC CK 0068

In the Supreme Court Of India

Case No : Writ Petition (C) No. 297 of 2011

Justice P.D. Dinakaran

APPELLANT

Vs

Hon"ble Judges Inquiry Commit. and Another

RESPONDENT

Date of Decision : 19-07-2011

Acts Referred:

Constitution of India, 1950 — Article 141, 32
Judges (Inquiry) Act, 1968 — Section 3, 4, 4(1)

Citation : AIR 2011 SC 3711 : (2012) AIRSCW 1094 : (2011) AIRSCW 5500 : (2011) 8 SCALE 54

Hon'ble Judges : G.S. Singhvi, J;Chandramauki Kr. Prasad, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. In this petition filed under Article 32 of the Constitution, the Petitioner has questioned the legality of order dated 24.4.2011 passed by the Committee appointed under the Judges (Inquiry) Act, 1968 (for short, "the Act") whereby Respondent No. 2-Ms. R. Vaigai, Convenor of Forum for Judicial Accountability was allowed to remain present and watch the proceedings and to assist the Committee through its counsel and order dated 27.4.2011 whereby the petition filed for review of order dated 24.4.2011 was dismissed.

2. Shri Amarendra Sharan, learned senior counsel for the Petitioner argued that Respondent No. 2 has No. locus to participate in the proceedings being conducted by the Committee on the basis of Resolution moved by 50 members of the Rajya Sabha and the orders passed by the Committee are ultra vires the provisions of the Act. Shri Sharan relied upon the judgments of Constitution Benches in Mrs. Sarojini Ramaswami Vs. Union of India and others, and Krishna Swami Vs. Union of India and another, and argued that Respondent No. 2, who is a busybody qua the inquiry being conducted by the Committee cannot be allowed to remain present in the proceedings what to say of assisting the Committee's counsel. He referred to paragraph 69 of the first judgment and paragraphs 51

and 61 of the second judgment and argued that even though the views expressed by K. Ramaswamy, J. in the second judgment represent minority opinion, the same is binding on the Committee because majority of the Constitution Bench did not express any view on the scope of Section 4 of the Act. In support of last limb of his submission, learned senior counsel relied upon the judgments of the Bombay High Court in Mahendra Bhawanji Thakar Vs. S.P. Pande and Another, and Allahabad High Court in Prem Prakash Gupta Vs. Union of India (UOI) and Another,

3. We have thoughtfully considered the submissions of the learned senior counsel, but have not felt persuaded to agree with him that the impugned orders are ultra vires the provisions of the Act or are otherwise vitiated by any other legal infirmity.

4. Respondent No. 2 had submitted application dated 11.4.2011 to the Committee for supply of copies of the charges and documents enclosed with the charges along with the list of witnesses and also prayed that she may be allowed to act as intervener in the proceedings. That application was considered by the Committee on 24.4.2011 and the following order was passed:

The Committee considered the application dated 11th April, 2011 filed by Ms. R. Vaigai, Convenor of Forum for Judicial Accountability and directed the Registrar of the Judges Inquiry Committee to provide the copies of the charges and documents enclosed with the charges and the list of witnesses to the applicant. The applicant is allowed to remain present in course of the hearings. It will be open to her to watch the proceedings and to assist the Committee through its counsel Mr. U.U. Lalit, Senior Advocate.

5. The Petitioner applied for review of the aforesaid order, but his prayer was rejected by the Committee by making the following observations:

In connection with the permission of intervention given to Miss R. Vaigai the first thing to note is that she has not been allowed any independent intervention. All that has been permitted to her is to remain present and to watch the proceedings, and to assist the Committee only through its counsel Mr. U.U. Lalit. In other words, she or the organization represented by her has No. independent right of intervention or any right as a third party to the proceedings.

In this regard, it needs to be noted that Section 4 of the Judges (Inquiry) Act, 1968 empowers the Committee, subject to any rules that may be made in this behalf, to regulate its procedure in making the investigation. In the Rules there is No. provision expressly or by implication barring the presence of any third party that may have sufficient interest in the proceedings. Further, the permission accorded to Miss Vaigai is fully supported by an earlier precedent. Before the Justice Sawant Committee, the parties at whose instance the proceedings were initiated and who were supporting the charges against the Hon'ble Judge, were also allowed limited intervention on the same terms as in the present case.

Having considered the submissions made by Mr. Sharan we are unable to accept the prayer made in the application for review. It is, accordingly, rejected.

6. In our opinion, the permission granted by the Committee to Respondent No. 2 to remain present and watch the proceedings being conducted against the Petitioner and to assist it through the counsel is neither contrary to the provisions of the Act nor violates any of the constitutional or legal rights of the Petitioner. Section 4 of the Act, which empowers the Committee to regulate its procedure in making the investigation, reads asunder:

4. Report of Committee.-(1) Subject to any rules that may be made in this behalf, the Committee shall have power to regulate its own procedure in making the investigation and shall give a reasonable opportunity to the Judge of cross-examining witnesses, adducing evidence and of being heard in his defense.

(2) At the conclusion of the investigation, the Committee shall submit its report to the Speaker or, as the case may be, to the Chairman, or where the Committee has been constituted jointly by the Speaker and the Chairman, to both of them, stating therein its findings on each of the charges separately with such observations on the whole case as it thinks fit.

(3) The Speaker or the Chairman, or, where the Committee has been constituted jointly by the Speaker and the Chairman, both of them, shall cause the report submitted under Sub-section (2) to be laid, as soon as may be, respectively before the House of the People and the Council of States.

7. A reading of the plain language of Section 4(1) makes it clear that the Committee has been given complete freedom in the matter of regulating its procedure for the purpose of making investigation. The exercise of this power is subject to the rules made in this behalf. There is nothing in the language of Section 4(1) or any other section from which it can be inferred that the Committee is inhibited from allowing a third person to remain present in the proceedings of the case. Respondent No. 2 is not a meddlesome interloper qua the proceedings initiated against the Petitioner. She is convenor of the Forum for Judicial Accountability, which made representations to various constitutional functionaries and Members of Parliament and ultimately 50 members of the Rajya Sabha moved the motion for removal of the Petitioner from the office of the Chief Justice. The Committee has simply allowed her to remain present and watch the proceedings and to assist it through the counsel. Therefore, there is no merit in the argument of Shri Amarendra Sharan that the impugned orders are contrary to the provisions of the statute:

8. The judgments relied upon by Shri Amarendra Sharan do not have any bearing on the issue raised in this petition. In Sarojini Ramaswami's case, the Constitution Bench considered the question whether the Petitioner was entitled to seek a direction to the Committee appointed u/s 3 of the Act to supply a copy of the report to her husband, Mr. Justice V. Ramaswami so as to enable him to seek redress in a Court of law. The majority of the Constitution Bench opined that the

Petitioner did not have locus to seek a direction for supply of a copy of the report to her husband and in that context, the following observations were made in para 69 of the judgment:

69. On giving our anxious consideration to the submissions made by the learned Counsel, we find No. embargo, in principle or authority, to infer that in the constitutional scheme adopted in India, judicial review of the finding of guilty recorded by the Inquiry Committee during the statutory part of the process is impermissible after that tentative finding matures into 'proved misbehaviour' culminating in the order of removal. The argument of 'now or never' does not appeal to us and what appears more consistent in the constitutional scheme is that judicial review on permissible grounds is available not now but at the end of the process after the order of removal, if that stage is reached. In our view, this conclusion adequately protects the right of the Judge concerned, ensures expeditious conclusion of the process once it is commenced in the manner prescribed and accords with the view that the scheme is "a judicious blend of the political and judicial processes for the removal of Judges". It ensures preservation of the right, interest and dignity of the learned Judge and is commensurate with the dignity of all the institutions and functionaries involved in the process. It also excludes the needless meddling in the process by busybodies confining the participation in it to the Members of Parliament, the Speaker/Chairman and the Inquiry Committee comprising of high judicial functionaries apart from the Judge concerned, if the allegations permitted to be made only in the prescribed manner justify an inquiry into the conduct of the Judge.

9. In Krishna Swami's case, the majority of the Constitution Bench nonsuited the Petitioner on the ground of lack of locus. Krishna Swami, who was a Member of the 10th Lok Sabha and also an advocate of Madras had filed petition with the prayer for reconsideration of the judgment of the earlier Constitution Bench in Sub-Committee of Judicial Accountability Vs. Union of India and others, and for quashing the proceedings of the Inquiry Committee on the ground that the procedure adopted by it for conducting the inquiry was not legal. In para 27 of the judgment, the majority referred to the opinion expressed by K. Ramaswamy, J. and observed:

27. We add that on a reconsideration of the matter in the light of the exposition of law made by Brother K. Ramaswamy in his separate opinion circulated to us, we regret our inability to concur with him in the area of his disagreement. On the points decided by us, leaving open the points which do not arise at this stage for our consideration for the reasons we have given, preferring to follow the salutary practice of not deciding any question, much less a constitutional one, unless it is necessary to do so, we would prefer to reserve our opinion on the remaining questions for the occasion, if any, in the future when they arise for decision.

10. Since the majority had expressly disagreed with the views of K. Ramaswamy, J., the opinion expressed by him cannot be treated as a declaration of law under Article 141 of the Constitution.

11. For the reasons stated above, the writ petition is dismissed.