
(1981) 06 KL CK 0023
In the High Court Of Kerala
Case No : O.P. No. 5205 of 1976

Kumara Menon

APPELLANT

Vs

State of Kerala and Another

RESPONDENT

Date of Decision : 10-06-1981

Acts Referred:

Constitution of India, 1950 — Article 233, 234, 235, 236, 237

Citation : (1981) 06 KL CK 0023

Hon'ble Judges : Subramonian Poti, Acting C.J.;Khalid, J

Bench : Division Bench

Advocate : Pirappancode V. Sreedharan Nair and V.N. Achutha Kurup, for the Appellant; K. Sud(sic)karan, General, for the Respondent

Judgement

Subramonian Poti, A.C.J.

1. The sweep of the power of control over District Courts and Courts Subordinate thereto by the High Court under Article 235 of the Constitution of India must be taken as well settled by now. Though the term "control" in Article 235 of the Constitution is not defined the Supreme Court has spoken repeatedly on the scope of the term in such explicit terms that the ambit of the power of control over the subordinate judiciary remains well explained. It is in this background that the question which arises in this case calls for determination. It is a question of some importance in that it calls for demarcation of the functions of the High Courts and the Governments of the States in the matter of disciplinary action against a judicial officer of the State.

2. Sri P. Kumara Menon, who was a Munsiff from 1969 was posted as Sub-divisional Magistrate, Kanjira-ppally and while he was functioning as such Sub-divisional Magistrate a memo of charges was issued to him in December, 1971 charging him with grave misconduct. The main charge against him was that he, while functioning as Sub-divisional Magistrate, Kanjirappally, used to receive illegal gratification either directly or indirectly from parties as well as Advocates involved in the cases on the file of his Court misusing his official status as the

Presiding Officer of the court. Since the charges were denied, an enquiry was caused to be held by the District Judge, Kottayam. After considering the inquiry report, copy of which is Ext. P-3 in the case, the High Court did not agree with the conclusion reached by the Enquiry Officer in respect of charges numbers 1 and 2. Charge number 1 was the main charge to which we have adverted. On the evidence the High Court found that charges 1 and 2 stood proved. By Ext. P-4 order the High Court besides finding that charges 1 and 2 stood proved by the evidence adduced at the enquiry held that the Petitioner was unfit to be retained in the judicial service. The Petitioner had been placed under suspension in the meanwhile. The report of enquiry was forwarded to the Government along with the recommendation of the High Court that the Petitioner should be dismissed from service.

3. Acting upon the report and the findings of the High Court the State Government issued a notice dated 6th May 1975 to the Petitioner stating therein that the High Court of Kerala had decided that the Petitioner should be dismissed from service and calling upon the Petitioner to show cause why the punishment should not be imposed on him. Ext. P-5 is the copy of the show cause notice. This notice was evidently a notice as required by Article 311(2) of the Constitution.

4. The Petitioner responded to Ext. P-5 notice by his explanation dated 20th June 1975. Ext. P-6 is the copy of that explanation. In that explanation he prayed for an opportunity to be heard since the findings of the High Court were in reversal of the findings of the Inquiring authority and those had been reached without notice to him. Another petition Ext. P-7 dated 15th December 1975 was also submitted by the Petitioner reiterating his request for an opportunity of being heard. The complaint of the Petitioner is that the first Respondent, the State of Kerala, passed the order dated 7th July 1976 dismissing the Petitioner from service without applying its mind to the facts of the case. He assumes that the Government must have taken the decision based merely on the decision of the High Court of Kerala as if the role of the first Respondent was only to implement the decision of the High Court. A copy of the order dismissing the Petitioner from service is Ext. P-8 in the case. In the Original Petition the Petitioner seeks to quash Ext. P-8 order.

5. Reference may be made to Ext. P-4. After considering the material adduced in the inquiry the High Court found that charges numbers 1 and 2 were proved against the delinquent officer, the Petitioner in this case. Ext. P-4 concluded with these words:

In view of the finding reached, on the first charge that the accused officer has been guilty of corrupt conduct involving the demand and receipt of illegal gratification he is unfit to be retained in the judicial service and the proper punishment to be imposed on him is dismissal from service.

This was the material on the basis of which the Government issued the memo to

the Petitioner mentioning inter alia:

The report along with the records of the enquiry was examined very carefully by the High Court and it was found that charges 1 and 2 framed against the officer were proved. As regards these two charges, the High Court has come to a conclusion different from the one arrived at by the Inquiring Authority. As regards charge number 3, the finding of the Inquiring Authority has been accepted by the High Court. The reasoning for arriving at a different conclusion as regards charges numbers 1 and 2 has been explained by the High Court in the annexure.

In view of the seriousness of the matter, the High Court has decided that Sri P. Kumara Menon should be dismissed from service and that pending the passing of the final orders in the disciplinary proceedings he should be suspended from service as per order No. D.2-1336/71/B-2, dated 24th January 1975 of the High Court. The High Court has now requested the Government to take necessary steps for implementing the decision of the High Court.

Government examined the enquiry report and the annexure forwarded by the High Court in detail with the relevant records. They agree with the recommendations of the High Court. Government therefore provisionally propose to dismiss Sri P. Kumara Menon from service with effect from the date on which he was placed under suspension.

This was the basis for the show cause notice. The reply to this filed by the Petitioner is rather elaborate. The final order passed by the Government thereafter, Ext. P-8, after referring to the history of the enquiry proceeds to deal with the matter thus:

The enquiry report and the recommendation of the High Court was examined by the Government and a provisional decision to accept the recommendation of the High Court was arrived at. In the memo cited second Sri Kumara Menon, was requested to show cause against the proposed action of the Government. After examining all the relevant records and the explanation submitted by Sri Kumara Menon, the Governor of Kerala has decided to accept the recommendation of the High Court and order his dismissal from service.

6. The short question urged at the hearing by Petitioner's counsel concerns the role played by the Government in passing the order Ext. P-8. The complaint in the Original Petition is that Government failed to apply its mind to Ext. P-6 reply to the show cause notice and it evidently felt bound by the decision of the High Court in the matter. Factually this does not appear to be correct, for, the notice Ext. P-5 as well as the order Ext. P-8 indicate independent exercise of the mind of the Government and if that is what appears on record it may not be possible to say that despite what is stated in the notice and the order the Government did not in fact and in truth apply its mind. To hold so would not be possible in the circumstances of the case. On the materials available we have to assume that the Government did exercise its mind.

7. Though there is no case in the Original Petition that it is for the High Court to exercise its mind when reply to the show cause notice is received--in fact the contention would spell an entirely contrary case--at the hearing of this case there was occasion to examine in depth the scope of the functions of the Government in passing the final order in such disciplinary proceedings and the ambit of the power of the High Court in the matter of disciplinary proceedings and as a result of such discussion at the bar learned Counsel for the Petitioner urged--he was permitted to so urge--that the order Ext. P-8 is bad for the reason that there was to occasion for the High Court to exercise its mind on Ext. P-6 reply and this vitiates the order Ext. P-8. This is the question which should engage our attention in this case.

8. That on receipt of Ext. P-6 reply to the show cause notice Ext. P-5 issued to the Petitioner the Government proceeded to decide the question of punishment and passed Ext. P-8 is not in controversy. No reference was made to the High Court before passing Ext. P-8 order. The important issue that arises is whether the Government, on receipt of the reply to the show cause notice was bound to consult the High Court before the imposition of the punishment. Is it the final satisfaction of the Government on the reply of the Petitioner that should decide the fate of the disciplinary action or has the High Court to pronounce on that before the Government takes a final decision? If it was for the High Court to decide whether the explanation was satisfactory there was no occasion in this case for the High Court to so decide and hence Ext. P-8 order passed by the Government on a consideration by it of Ext. P-6 reply may have to be held to be bad. In that event the Petitioner would succeed in his prayer to quash the final order in the disciplinary proceedings.

9. It may not be necessary to refer to the scheme in Chapter VI of Part VI of the Constitution of India to understand the scope of Article 235 since, as we have indicated earlier, the scheme has been examined, in detail, by the Supreme Court on several occasions. Article 235 speaks of the "vesting" in the High Court the "control" over the District Courts and Courts Subordinate thereto. That the control is so vested to effectuate a purpose, namely, the securing of independence of the judiciary was indicated by Hidayathulla J., as he then was, in *The State of West Bengal Vs. Nripendra Nath Bagchi*, . The court observed in that case that the High Court is made the sole custodian of the control over judiciary. Chief justice Ray expressed this idea in no uncertain terms in the decision in *Samsher Singh Vs. State of Punjab and Another*, . The learned Chief Justice said thus:

The Governor will act on the recommendation of the High Court. That is the broad basis of Article 235.

In that case the conduct of the High Court in directing the conduct of an enquiry against a Judicial Officer through the Director of Vigilance came up for comment. This was considered as in total disregard of Article 235 and as an act of self-abnegation. The learned Chief Justice further said thus:

We held that the President as well as the Governor acts on the aid and advice of the Council of Ministers in executive action and is not required by the Constitution to act personally without the aid and advice of the Council of Ministers or against the aid and advice of the Council of Ministers.

The Judgment continued:

The appointment as well as removal of the members of the Subordinate Judicial service is an executive action of the Governor to be exercised on the aid and advice of the Council of Ministers in accordance with the provisions of the Constitution. Appointments and removals of persons are made by the President and the Governor as the Constitutional head of the executive on the aid and advice of the council of ministers.

The same idea was expressed by the same learned Chief Justice in the subsequent decision in *State of Haryana Vs. Inder Prakash Anand H.C.S. and Others*, . In that case a Judicial Officer was compulsorily retired against the recommendation of the High Court. The Court said in that context thus:

Administrative, judicial and disciplinary control over members of the Judicial Service is vested solely in the High Court. Premature retirement is made in the exercise of administrative and disciplinary jurisdiction. It is administrative because it is decided in public interest to retire prematurely. It is disciplinary because the decision was taken that he does not deserve to continue in service upto the normal age of superannuation and that it is in the public interest to do so.

10. No doubt the Governor is the authority to dismiss, remove or reduce in rank. But this does in no way infringe on the powers of the High Court of control over the subordinate judiciary. Though at one time it was doubted whether disciplinary action fell within the scope of the term "control" it was settled as early as in 1966 see *The State of West Bengal Vs. Nripendra Nath Bagchi*, , that the control envisaged took in disciplinary control also. If the High Court is not to exercise disciplinary control over the members of the Subordinate Judiciary, it will not be possible to keep the Subordinate Judiciary under proper check. The power to initiate disciplinary action, conduct enquiry and take decision are envisaged in the power of control under Article 235 of the Constitution. This is notwithstanding the fact that the power to dismiss is vested in the Governor. The Governor, in this context, acts on the advice of council of Ministers and not on his own and the Governor who so acts, acts on the recommendation of the High Court. It would be unconstitutional not to pay heed to the recommendation of the High Court since that may amount to trespass upon the power of control of the High Court. The learned Chief Justice Ray in the decision just now adverted to, *State of Haryana v. Inder Prakash AIR 1976 S.C. 1831*, refers to this in the context of the facts of that case:

The control vested in the High Court is that if the High Court is of opinion that a particular Judicial Officer is not fit to be retained in service the High Court will

communicate that to the Governor because the Governor is the authority to dismiss, remove, reduce in rank or terminate the appointment. In such cases it is the contemplation in the Constitution that the Governor as the head of the State will act in harmony with the recommendation of the High Court. If the recommendation of the High Court is not held to be binding on the State consequences will be unfortunate. It is in public interest that the State will accept the recommendation of the High Court. The vesting of complete control over the Subordinate Judiciary in the High Court leads to this that the decision of the High Court in matters within its jurisdiction will bind the State. "The Government will act on the recommendation of the High Court. That is the broad basis of Article 235. See Shamsher Singhs case.

That the High Court alone could make enquiries into disciplinary action was the view expressed by the same learned Chief Justice in Baradakanta Mishra Vs. High Court of Orissa and Another, . In a later case Sarkaria J, examined the scheme of the provisions relating to the powers of the High Court. Though in that case the scope of Article 235 did not directly arise for decision there was an elaborate examination of the scope of the Article in that decision. Chief Justice of Andhra Pradesh and Others Vs. L.V.A. Dixitulu and Others, . The variety of matters which Article 235 apprehends is enumerated in detail in paragraph 37 of that judgment. The learned Judge observes:

Article 235 is the pivot around which the entire scheme of the Chapter revolves. Under it, "the control over district courts and courts subordinate thereto including the posting and promotions of, and the grant of leave to persons belonging to the judicial service of a State" is vested in the High Court.

11. We think it may be useful to summarise what has been said by the Supreme Court on the scope of Article 235 of the Constitution of India:

1. The High Court is made the sole custodian of the control over the judiciary.
2. "Control" of the Subordinate judiciary is vested in the High Court to effectuate a purpose, namely the securing of independence of the Judiciary.
3. The control vested in the High Court is complete control subject only to the power of the Governor in the matter of appointment, posting and promotion of District Judges.
4. The Governor will act on the recommendation of the High Court, that is the broad basis of Article 235.
5. The Governor is the authority to dismiss, remove or reduce in rank or terminate the appointment. Where in regard to an officer action falling within Article 235 is contemplated the Governor as the head of the State has to act in harmony with the recommendation of the High Court. If the recommendation of the High Court is not held to be binding on the Government the consequences will be unfortunate.

6. It is in public interest that the State will accept the recommendation of the High Court. The vesting of complete control over the Subordinate Judiciary in the High Court leads to this, that the decision of the High Court in matters within its jurisdiction will bind the State.

7. Appointment as well as removal of the members of the judicial service is an executive action of the Governor. This has to be exercised on the aid and advice of the Council of Ministers in accordance with the provisions of the Constitution.

Having now discussed the scope of the power of control vested in the High Court it is evident that the initiation of the disciplinary proceedings, the conduct of such proceedings and the determination of the truth or otherwise of the charges are the functions of the High Court. It is for the High Court to recommend whether as a result of such enquiry charges must be found to have been proved and whether the officer is to be punished. Without such an effective recommendation, which as we have indicated, the Governor would be bound to accept--Governor in that context means the Governor acting on the aid and advice of the Council of Ministers--it would not be possible to, finalise disciplinary action validly. The issue of show cause notice by the Government is necessarily based in the findings of the High Court. If the Constitution contemplates an opportunity to the officer charged with misconduct that opportunity would be effective only if that is considered by the authority who is competent to come to a final decision on it. If the High Court had found, on the evidence, that the delinquent officer was guilty of the charges, could the Government come to a different conclusion on perusal of the reply of the officer to the show cause notice? We think not. That is because the decision on the materials available should necessarily be that of the High Court and it is that decision that should form the basis of the recommendation culminating in the punishment. It is no doubt true that the Governor is to pass the final order dismissing the person from service if that be called for in a case, but the recommendation on the basis of which he is to act is the final recommendation the power to make which and the responsibility for making which is in the High Court and in the High Court only. That final recommendation can be only after perusing Ext. P-6 reply. The earlier decision taken is by its very nature only provisional, for, if Article 311(2) of the Constitution contemplates an opportunity to be given to the officer concerned to show cause and it is open to him at that stage to so show cause, that must be considered by the High Court before reaching a final decision on the question of recommendation.

13. We are aware that the rules in force in the Kerala Civil Service (Classification, Control and Appeal) Rules do not envisage a contingency such as that arising in this case. In fact now that the scope of Article 235 is beyond the pale of controversy it is easy to find that there are provisions in Civil Services (Classification, Control and Appeal) Rules which are inappropriate to the situation concerning the disciplinary action against those who are controlled by Article 235 of the Constitution. In view of the provision in Article 235 a separate treatment

has to be provided for in respect of those coming within the disciplinary control of the High Court and suitable amendments to the rules are called for. This is a matter for the Government to look into.

As we have indicated, Kerala Civil Services (Classification, Control and Appeal) Rules, 1960 do not envisage a situation such as the one arising in this case. But the Rules cannot over-ride any Constitutional provision and must be read subject to it. So read one has necessarily to notice that the decision to be reached on Ext. P-6 explanation submitted by the Petitioner is to be by the High Court. The course that has to be adopted in such circumstance is to forward the explanation of the delinquent officer in reply to the show cause notice to the High Court for its views and to act upon the final recommendation of the High Court after consideration of such explanation. Inasmuch as this has not been done, Ext. P-8 order has to be set aside. We do so. This does not preclude the Government from taking such action as it may be advised to take, if any such action could be taken in law against the Petitioner now. The original petition is allowed to the above extent. No costs.

Khalid, J.

14. I agree with the learned Acting Chief Justice that the petition has to be allowed in the manner indicated by him. The scope and ambit of Article 235 of the Constitution may not be familiar learning to many. But persons in high places and those connected with the discharge of functions under the provisions contained in Chapter VI, Part VI, of the Constitution should at least be aware, if not familiar, with the content of these Articles of the Constitution, and with the law of the land laid down by the Supreme Court bearing on them. This Chapter finds a place in the Constitution despite Part XIV dealing with services under the Union and the States. This was done in recognition of the long pending desire to preserve the independence of the subordinate judiciary. This Chapter has conferred certain powers on the High Courts, which should be jealously guarded. The Supreme Court has consistently upheld this power and looked with disfavour any attempt for surrender of these powers by the High Court. In the light of the authoritative pronouncements of the Supreme Court, it well behoves us to remind all, of these powers with a request to give unto the High Court what is the High Court's. These thoughts are the only justification for this tailpiece (though long) to the main judgment.

15. Though the averments in the petition did not pointedly raise the relevant question, the point ultimately argued before us as permitted by us, touched upon the powers of the High Court, which are its special preserve, under Article 235 of the Constitution. I would rest content by extracting a few more observations of the Supreme Court and refrain from contributing anything of my own.

16. In *The State of West Bengal Vs. Nripendra Nath Bagchi*, , Hidayatullah, J., as he then was, speaking for the Constitution Bench traced the history of Chapter VI and observed:

Further, as we have already shown, the history which lies behind the enactment of these Articles indicates that "control" was vested in the High Court to effectuate a purpose, namely, the securing of the independence of the subordinate judiciary and unless it included disciplinary control as well the very object would be frustrated.

* * * *

The word "control", as we have seen, was used for the first time in the Constitution and it is accompanied by the word "vest", which is a strong word. It shows that the High Court is made the sole custodian of the control over the judiciary.

* * * *

What is vested includes disciplinary jurisdiction. Control is useless if it is not accompanied by disciplinary powers. It is not to be expected that the High Court would run to the Government or the Governor in every case of indiscipline however small and which may not even require the punishment of dismissal or removal. These articles go to show that by vesting "control" in the High Court the independence of the subordinate judiciary was in view. This was partly achieved in the Government of India Act, 1935 but it was given effect to fully by the drafters of the present Constitution. This construction is also in accord with the Directive Principles in Article 50 of the Constitution which reads:

50. The State shall take steps to separate the judiciary from the executive in the public services of the state.

(see pp. 453-454).

17. In *Samsher Singh Vs. State of Punjab and Another*, , the Supreme Court, which was considering the satisfaction of the President mentioned in Article 311(2)(c) of the Constitution observed thus:

...The Constitution makers apparently felt that a matter in which the interest of the security of the State had to be considered should receive the personal attention of the President or the Head of the State and he should be himself satisfied that an inquiry under the substantive part of Clause (2) of Article 311 was not expedient for the reasons stated in Clause (c) of the proviso in the case of a particular servant.

The correctness of this view of the Constitution Bench was doubted in *Samsher Singh Vs. State of Punjab and Another*, , by a Bench of 7 Judges and the law is laid down at page 2282 (paragraph 48) as follows:

48. The President as well as the Governor is the constitutional or formal head. The president as well as the Governor exercises his powers and functions conferred on him by or under the Constitution on the aid and advice of his Council of Ministers, save in spheres where the Governor is required by or under the Constitution to exercise his functions in his discretion....

Considering the scope of Articles 234 and 235, it said thus about the powers of the High Court:

78. The High Court for reasons which are not stated requested the Government to depute the Director of Vigilance to hold an enquiry. It is indeed strange that the High Court which had control over the subordinate judiciary asked the Government to hold an enquiry through the Vigilance Department. The members of the subordinate judiciary are not only under the control of the High Court but are also under the care and custody of the High Court. The High Court failed to discharge the duty of preserving its control. The request by the High Court to have the enquiry through the Director of Vigilance was an act of self abnegation. The contention of the State that the High Court wanted the Government to be satisfied makes matters worse. The Governor will act on the recommendation of the High Court. That is the broad basis of Article 235. The High Court should have conducted the enquiry preferably through District Judges. The members of the subordinate judiciary look upto the High Court not only for discipline but also for dignity. The High Court acted in total disregard of Article 235 by asking the Government to enquire through the Director of Vigilance.

The Supreme Court in the above passage administered a mild rebuke to the High Court for running to the Government, surrendering its powers to an outside body and reminded it of its exclusive powers. The main judgment by Ray, C.J., concludes thus:

88. For the foregoing reasons we hold that the President as well as the Governor acts on the aid and advice of the Council of Ministers in executive action and is not required by the Constitution to act personally without the aid and advice of the Council of Ministers or against the aid and advice of the council of Ministers. Where the Governor has any discretion, the Governor acts on his own judgment. The Governor exercises his discretion in harmony with his Council of Ministers. The appointment as well as removal of the members of the subordinate Judicial Service is an executive action of the Governor to be exercised on the aid and advice of the Council of Ministers in accordance with the provisions of the Constitution.

Krishna Iyer, J., has this to say regarding the High Court's powers at paragraph 155 as follows:

The second spinal issue in the case, as earlier indicated, bears on fearless justice, another prominent creed of our Constitution. The independence of the judiciary is a fighting faith of our founding document. Since the days of Lord Coke, judicial independence from executive control has been accomplished in England. The framers of our Constitution, impressed by this example, have fortified the cherished value of the rule of law by incorporating provisions to insulate the judicature. Justice becomes fair and free only if institutional immunity and autonomy are guaranteed (of course there are other dimensions to judicial independence which are important but irrelevant for the present

discussion). The exclusion of executive interference with the Subordinate Judiciary, i.e., grass-roots justice, can prove a teasing illusion of the control over them is vested in two masters, viz., the High Court and the Government, the later being otherwise stronger. Sometimes a transfer could be more harmful than punishment and disciplinary control by the High Court can also be stultified by an appellate jurisdiction being vested in Government over the High Court's administrative orders. This constitutional perspective informed the framers of our Constitution when they enacted the relevant Articles 233 - 237. Any interpretation of administrative jurisdiction of the High Court over its subordinate limbs must be aglow with the thought that separation of the executive from the judiciary is a cardinal principle of our Constitution. However, we do not pursue this question further since, in the present case, Government has agreed with and acted on the High Court's "recommendation" and, moreover, the methodology of conflict resolution, when the view of the High Court is unpalatable to the executive, falls to be directly considered in a different set of pending appeals.

In *State of Haryana Vs. Inder Prakash Anand H.C.S. and Others*, . Ray, C.J., while considering the powers of the High Court vis-a-vis the Governor observed as follows:

The decision of this Court in *The State of West Bengal Vs. Nripendra Nath Bagchi*, , and *High Court of Punjab and Haryana and Others Vs. The State of Haryana and Others*, , are that Article 235 vests in the High Court control over District Courts and Courts subordinate thereto. The Governor appoints and dismisses and removes judicial officers. Control, which is vested in the High Court, is complete control subject only to the power of the Governor in the matter of appointment, including dismissal, removal, reduction in rank and the initial posting and of the initial promotion to District Judges. There is nothing in Article 235 to restrict the control of the High Court in respect of Judges other than District Judges in any manner....

* * * * The control vested in the High Court is that if the High Court is of opinion that a particular Judicial Officer is not fit to be retained in service, the High Court will communicate that to the Governor because the Governor is the authority to dismiss, remove, reduce in rank or terminate the appointment....

In *Baldev Raj Guliani Vs. The Punjab and Haryana High Court and Others*, , Goswami, J., spoke as follows:

The controversy in these appeals is rather disquieting. In view of several decisions of this Court wherein different facets of like problems were noticed and resolved one would have thought that a healthy convention has grown and taken firm roots by now in fulfilment of one of the cherished Directive Principles of the Constitution in Article 50 which is based on the bed-rock of the principle of independence of the judiciary.

15. Here, the High Court, after a full enquiry, which has not been questioned at any stage, came to the conclusion that the charges of misconduct of a judicial

officer were established and that the officer was of dubious integrity. Who else but the High Court in such a situation, is better posted to determine the issue and advise the Governor? Yet, the stark reality is that the High Court's recommendation was given a go-by and the commission's contrary advice was preferred by the Governor. Time and again this Court has been observing hopefully that it will be in the best interest of a high and healthy tradition for the Governor to ordinarily accept the recommendation of the High Court in a disciplinary matter concerning judicial officers.

The above observations of the learned Judge are illuminative and bring to sharp focus the importance of the question. The learned Judge further observes at Para 26:

The High Court, in making its recommendation to the Governor for passing the order of removal, has rightly conceded the authority of the Governor to pass the same. The question is: Is the recommendation of the High Court binding on the Governor? Since the Governor is the ultimate authority to pass the order of removal it will not be correct always to insist that he has no authority even under certain extraordinary circumstances to decline to accept, forthwith, the particular recommendation. Ordinarily, and as a matter of graceful routine, recommendations of the High Court are and should be always accepted by the Governor. That is ordinarily so and should be in practice the rule as a matter of healthy convention.

The following guidelines are laid down to be followed in exceptional circumstances:

For the first time, in the country's history, appeared in the Constitution of India the concept of control over subordinate courts to vest in the High Courts. The quality of exclusive control of the High Court does not appear to be whittled by the constitutional device of all orders being issued in the name of the Governor as the Head of the State administration. When, therefore, the High Court exercising disciplinary control over the subordinate judiciary finds, after a proper enquiry that a certain officer is guilty of gross misconduct and is unworthy to be retained in judicial service and, therefore, recommends to the Governor his removal or dismissal, it is difficult to conceive how and under what circumstances such a recommendation should be rejected by the Governor acting with the aid and advice of the Council of Ministers or, as is usually the case, of one of the Ministers. It is in this context that this Court has more than once observed that the recommendation of the High Court in respect of judicial officers should always be accepted by the Governor. This is the inner significance of the constitutional provisions relating to the subordinate judiciary. Whenever in an extraordinary case, rare in itself, the Governor feels, for certain reasons, that he is unable to accept the High Court's recommendations, these reasons will be communicated to the High Court to enable it to re-consider the matter. It is, however, inconceivable that, without reference to the High Court, the Governor would pass an order which had not been earlier recommended by the High Court.

That will be contrary to the contemplation in the Constitution and should not take place.

In *State of Gujarat and Another Vs. Ramesh Chandra Mashruwala, Ray, C.J.*, set aside the judgment of the High Court of Gujarat and observed as follows:

The High Court was in error in holding that the High Court has no power to order disciplinary proceedings. It is significant that the High Court abdicated its own disciplinary jurisdiction. The independence of the judiciary has been emphasised by this Court in unmistakable terms in the following two decisions. 1. *The High Court of Punjab and Haryana and Others Vs. The State of Haryana and Others*, and 2, *Samsheer Singh Vs. State of Punjab and Another*,

In *Chief Justice of Andhra Pradesh and Others Vs. L.V.A. Dixitulu and Others*, , Sarkaria, J., speaking for the Bench observed as follows:

Article 235 is the pivot around which the entire scheme of the Chapter revolves. Under it, "the control over District Courts and Courts subordinate thereto including the posting and promotions of, and the grant of leave to persons belonging to the judicial service of a State" is vested in the High Court.

And further in paragraph 38:

The interpretation and scope of Article 235 has been the subject of several decisions of this Court. The position crystallised by those decisions is that the control over the subordinate judiciary vested in the High Court under Article 235 is exclusive in nature, comprehensive in extent and effective in operation.

The above authorities have unequivocally laid down the powers of the High Court regarding the subordinate judiciary. What the Constitution postulates is harmony between the different organs of the State. I thought it profitable to refer to these authorities to highlight the distribution of powers under the Chapter VI of Part VI. It may sound strange that satisfaction of the Government on the explanation submitted by the delinquent officer in this case is not sufficient. What we are concerned with is the constitutional mandate, and that is the reason why we held that the explanation of the delinquent officer to the show cause notice should be sent to the High Court for its view so that the Government could act upon the final recommendations of the High Court after consideration of such explanation.