

(1996) 06 MAD CK 0019

In the Madras High Court

Case No : Writ Petition No. 2252 of 1995

T.S. Sankaranarayanan

APPELLANT

Vs

The High Court of Judicature

RESPONDENT

Date of Decision : 20-06-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 225

Citation : (1996) 2 LLJ 1159

Hon'ble Judges : AR. Lakshmanan, J

Bench : Single Bench

Advocate : G. Masilamani, S.C. for M.S. Sathyanarayanan and K. K. Ananthapadmanabhan, for the Appellant; R. Muthukumaraswami, Govt. Pleader assisted by V.R. Rajasekaran, Government Advocate, for the Respondent

Judgement

A.C. Lakshmanan, J.—The above writ petition has been filed for the following relief. To issue a writ of certiorari, calling for the records

connected with the impugned order in ROC No. 183/94/Con. B2 dated November 30, 1994 on the file of the respondent and quash the same.

2. This is a second round of litigation in this connection. The petitioner joined the State Judicial Service as District Munsif and then promoted as

subordinate Judge and as District Judge, Grade II. In due course, he had been promoted as District Judge, Grade I. The Petitioner has so far put

in 25 years of service.

3. While so, the petitioner was served with a confidential Official Memorandum in ROC No. 77/90/Con. B2 dated February 18, 1991 issued by

the Hon'ble Enquiring Judges, Hon'ble me. Justice M. Srinivasan and Hon'ble Mr. Justice A. Abdul Hadi, directing him to showcause as to why

disciplinary action should not be taken against him under the Tamil Nadu Civil

Services (Classification, Control and Appeal) Rules. Totally, 18

allegations were made against the petitioner. To the said memorandum of allegations, the petitioner submitted his explanation on March 25, 1991.

Being unsatisfied with the explanation, the Hon''ble Enquiring Judges constituted by the Hon''ble the Chief Justice, by an order dated February 18,

1991, framed 18 charges against the petitioner. The gravamen of the imputations mentioned in the charge memo were;

a) The petitioner made certain Class 3 and Class 4 appointments/Promotions for monetary consideration and consequently, he is guilty of

corruption and grave misconduct,

b) The petitioner made the aforesaid appointments/promotions for monetary considerations and also by way of undue favouritism and therefore, he

is guilty of corruption, grave misconduct and wilful contravention of the rules.

4. The petitioner submitted his written statement of defence to those 18 charges on September 9, 1991. The petitioner inter alia raised a

preliminary objection regarding the constitutional validity and lack of jurisdiction of the Hon''ble enquiring committee to initiate disciplinary

proceedings in view of the fact that the committee of Hon''ble Judges was appointed by the Hon''ble the Chief Justice and not by the High Court

viz., Full Court of Hon''ble Judges under Article 235 of the Constitution of India read with Article 216. The said objection was over-ruled by the

Hon''ble Enquiring Judges.

5. During the enquiry, out of seven witnesses cited in the charge memo, only three witnesses had been examined as P.Ws, 1 to 3. The other

witnesses had been dispensed with. Three more additional witnesses were examined as P.Ws 4 to 6 by the Hon''ble Enquiring Judges, in spite of

the objection raised by the petitioner. None of the witnesses supported the charge of monetary corruption as the motive for

appointments/promotions. The Hon''ble Enquiring Judges overruled the objection taken by the petitioner to their jurisdiction to conduct the enquiry

as unsustainable. The Hon''ble Enquiring Committee returned the following findings:

We are convinced that the actions of the delinquent officer with reference to the promotions and appointments are not bona fide. It is not as if they

have resulted pursuant to any honest error on the part of the delinquent officer.

In the result, our findings are as follows:

Charge No. 1: the delinquent officer is guilty of corruption, grave misconduct and wilful contravention of the relevant rules of T.N.J.M.S. Rules.

That part of the charge that he acted for pecuniary consideration is not proved. Charge Nos. 2 to 17. The delinquent officer is guilty of corruption, grave misconduct and wilful contravention of the relevant rules. The charges that he acted for monetary consideration are not proved.

Charge No. 18: This charge is not proved"".

6. Thereafter, the matter was placed before the Administrative Committee No. 1 for consideration and later before the meeting of the Hon''ble

Judges (Full Court). The Full Court resolved that a copy of the finding of the Hon''ble Enquiring Judges be forwarded to the petitioner so that he

may send his further representation, if any. The petitioner submitted his further representation, which was again directed to be placed before the

meeting of the Hon''ble Judges (Full Court). This direction was given by the Hon''ble the Chief Justice and Hon''ble Mr. Justice V. Ratnam. The

Full Court at its meeting held on December 24, 1992 resolved that a committee comprising of M. Srinivasan and A. Abdul Hadi, JJ., shall consider

the further representations submitted by the petitioner and give a report for consideration by the Full Court. The Committee perused the further

representation given by the petitioner. However, the Committee do not find any justification to accept the same and reiterated the finding given in

their earlier report. Thereafter, the matter was placed before the Administrative Committee No. 1 consisting of the Hon''ble the Chief Justice and

V. Ratnam, K.S. Bakthavatsalam and D. Raju, JJ. The Administrative Committee No. 1 came to the following conclusion.

The charges framed against the officer are about 18. The basic complaint against the Officer is that he had made certain appointments and given

undue promotions to various persons referred to in the charges in contravention of the relevant rules. Apart from the violation of rules and circular

orders of this Court in the matter of such appointments and promotions, it was specifically alleged that those irregular appointments were made for

pecuniary considerations and, therefore, the officer was guilty of corruption. No other from of corruption than pecuniary considerations was the

subject matter of the charges. In respect of some charges favouritism has been

only alleged.

The officer, while denying the charges, also denied that his action was not with any corrupt motive as alleged and that he has not received any pecuniary consideration. An objection regarding the initiation of the enquiry was also raised, that the Enquiry Committee was not constituted and charges not framed by the Full Court, as envisaged under Article 235.

The Enquiry Committee overruled the objection based on Article 235 on the ground that all along the practice has been that Hon"ble Chief Justice alone used to nominate the Committee and the Committee only used to frame charges. Certain decisions relied upon by the officer were held not really supporting the stand of the officer and they were distinguished.

So far as the finding of the committee is concerned, the charges were held proved. At the same time, at more than one place, the learned Judges

(Srinivasan, J. and Abdul Hadi, J) have stated that there is no evidence that the delinquent Officer received pecuniary consideration. It is also

stated that there cannot be any direct evidence on that matter and none of the witnesses examined by the Vigilance Officer even alleged that the

delinquent Officer had received any money from any person. Thereafter the finding is that corruption does not necessarily mean and involve

pecuniary consideration. But any other form of consideration has to be specified in the charge memo; there should be some oral evidence on that,

and then the findings can be that though not pecuniary, there was other category of consideration. In the absence of any such mention in the charge

or evidence on record, the finding against the officer could be only of his being guilty in making irregular appointments in contravention of rules and

circular orders.

Consequently: the findings could be validly sustained to. the extent that the officer is guilty of grave misconduct and wilful contravention of the

relevant rules. It is all the more so. When the findings have been specifically recorded that he acted for pecuniary or monetary consideration has

not been proved. (Vide findings in Part VII of the Report)

In the light of the objection raised by the delinquent judicial officer, it is now to be considered as to whether we should, in this case, order de novo

proceedings from the beginning or can impose minor punishment. For minor punishment, as per Rule 17(a) of the Rules, the officer has to be given

a reasonable opportunity of making any representation and it shall be taken for consideration, after submission of the issue of notice and he has

submitted his representation. The further representation is also taken into consideration in addition to the findings recorded by the Enquiring Judges.

As such, as per Rule 17(a) of the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules, it is resolved to impose the punishment of

withholding two increments without cumulative effect. The penalty to become effective from the date next increment falls due.

7. It is seen from the above conclusion that a minor punishment of withholding two increments without cumulative effect was decided upon for two

reasons viz., (1) to avoid a de novo enquiry arising out of the objection regarding the jurisdiction of the Hon''ble the Chief Justice to constitute the

Committee of Hon''ble Judges to initiate the disciplinary proceedings; and (2) the enquiry had not established pecuniary corruption but only

indicated irregular appointments.

8. The matter was again placed before the Full Court on October 28, 1993. The Full Court resolved to accept the resolution of Administrative

Committee No. 1 and impose on the petitioner a minor punishment of withholding two increments without cumulative effect, the penalty to become

effective from the date the next increment falls due, which will also be entered in the confidential records of the petitioner.

9. The petitioner filed W.P.No. 22696 of 1993 for the issue of a writ of certiorari to call for the records from the respondent and quash the order

of punishment passed in ROC No. 77/90. Con.B2. The said writ petition was admitted by D.Raju, J. The learned Judge referred the matter to a

Division Bench for further hearing since, according to the learned Judge, some of the issues raised in the writ petition are of great importance and

are likely to recur very often for adjudication. Thereafter, it was posted before a Division Bench.

10. A counter affidavit has been filed by the respondent wherein the material facts relating to the narration of events were not disputed. The

respondent has stated that sufficient opportunity was given to the petitioner to defend his case in the departmental enquiry. According to the

respondent, the constitution of the Hon''ble Enquiring Judge by the Hon''ble Chief Justice alone was perfectly in order. The point regarding the

validity of the constitution of the Hon"ble Enquiring Judges was projected before the Division Bench consisting of K. Venkataswami, J. as he then was, and J. Kanakaraj, J. It was contended that Article 235 of the Constitution of India vests the control over the District Court and the Courts subordinate thereto, including the disciplinary jurisdiction in the High Court and therefore, the word ""High Court"" in Article 235 of the Constitution has to be understood as the full complement of the Judges comprising the High Court. In other words, if at all, an Enquiring Committee is to be appointed, it must be so appointed only by the Full Court and not by the Hon"ble Chief Justice alone. The Division Bench elaborately and succinctly considered the issue raised before it and allowed the writ petition on the preliminary issue that the appointment of the Committee of Hon"ble Judges by the Hon"ble Chief Justice was not constitutionally valid and hence the entire disciplinary proceedings was held to be ab initio void. The said judgment is reported in 1994 (II) MLJ 168.

11. The Division Bench after an elaborate consideration of the interpretation of Article 235 read with Article 216 of the Constitution of India, and several Judgments of the High Courts and the Supreme Court, finally concluded as follows:

11 We have taken pains to show that the very question that is argued before us was in fact, posed by the Constitution Bench for decision and they have rendered a decision. If one makes a reference to the portions underlined by us in the passages quoted from the above said Supreme Court judgment, one can easily deduce that a similar body of Judges can be appointed only by the Full court and not by the Chief Justice alone. It is in this context that we have to see whether the observations of the Supreme Court in Registrar, High Court of Madras Vs. R. Rajiah, , could be understood as overruling the above categorical interpretation, and exposition of the manner in which the smaller body of Judges should be appointed, by the Constitution Bench in State of Uttar Pradesh Vs. Batuk Deo Pati Tripathi and Another, . We have no hesitation in coming to the conclusion that the latter judgment of the Supreme Court presided over by two Hon"ble Judges in Rajiah's case, did not overrule the said proposition, distinctly laid down by the Constitution Bench. One other circumstance which impels us to take the above decision is provided by

another judgment of the Supreme Court in Krishena Kumar and Others Vs. Union of India and others, . The following passage is apposite;

The ratio decided has to be ascertained by an analysis of the facts of the case and the process of reasoning involving the major premise consisting

of a pre-existing rule of law, either statutory or judge-made, and a minor premise consisting of the material facts of the case under immediate

consideration. If it is not clear, it is not the duty of the court to spell it out with difficulty, in order to be bound by it.

12. Learned Special Government Pleader referred to certain other judgments of the Supreme Court as well as two judgments of the High Court of

Allahabad and Orissa. We do not propose to refer to the same because they do not in any way advance or improve the case of either parties.

Another argument of the learned counsel for the respondent is, that it is enough if the Full Court considers and decides the imposition of punishment

on the particular Officer and that it is unnecessary that even at the stage of initiation the Full Court should be involved. In other words, the contention

is that for the purpose of initiation of the disciplinary proceedings it is unnecessary for the Full Court to consider and appoint a smaller committee.

We do not agree with this contention, because it would not be advisable to accept such a proposition and further the Supreme Court in Tripathi's

case (supra), did not make any such distinction. We say, that it would not be advisable because, the Full Court must be informed of the allegations

and deliberate over the same and decide whether there is a case to be proceeded with, by conducting an enquiry or whether to drop the same at

that stage itself. We feel that it will be proper for the Full Court itself to make such an important decision, rather than delegate the same to a smaller

body of Judges. Such a procedure, according to us will be more broad-based and also rule out any question of arbitrariness. It is therefore, our

considered view that even at the time of initiation, the Full Court must be involved in the exercise of appointing a smaller committee.

13. So far as the argument of the learned Special Government Pleader that in the matter of the imposition of a minor punishment under Rule 17(a)

of the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules, the question of an Enquiry Committee and consideration of the

findings of the Enquiry Committee do not at all arise, we have to observe that the decision as to whether a minor penalty is to be imposed or

whether the procedure under Rule 17(b) of the Rules should be followed, is itself based on the findings of the Hon"ble Enquiring Judges.

Therefore, in respect of any disciplinary proceedings which is forwarded to a smaller body of Judges, we are of the opinion that the Full Court

should be involved in the decision to delegate the proceedings to a smaller body of Judges

12. It is pertinent to notice that the judgment of the Division Bench above referred to was not appealed against by the High Court and therefore,

the inter-party order has become final, conclusive and binding.

13. Thereafter, the respondent moved Review Application No. 14 of 1994 for the removal of certain ambiguity contained in the judgment of the

Division Bench. The said Review Application came up for admission before the Division Bench consisting of J. Kanakaraj and Shivaraj Patil, JJ.

and the Division Bench ordered notice to the petitioner returnable in two weeks and in the meanwhile directed the respondent herein to file an

affidavit explaining the ground on which a review was sought for. The Affidavit filed by the respondent is no better than the grounds of review. It is

better to reproduce the affidavit filed in R.A.No. 14 of 1994. Paragraphs 2,3 and 4 of the affidavit read thus:

2. I submit that by an order dated March 8, 1994, the Division Bench of this Hon"ble Court allowed the Writ Petition No. 22696 of 1993 and

quashed the impugned order ROC. No. 27/90/Con.B2, which imposed the minor punishment of stoppage of two increments without cumulative

effect. I submit that one of the main questions that was considered by this Hon"ble Court in the said order was whether the Chief Justice alone can

appoint a smaller body of Judges for the purpose of initiation of the disciplinary proceedings. While considering the issue and after considering the

various judgments of the Supreme Court, Their Lordships came to a conclusion that a smaller body of Judges can be appointed only by the Full

Court and not by the Chief Justice alone.

3. I respectfully submit that after Their Lordships giving such a finding Their Lordships have further expressed as follows:

We feel that it would be proper for the Full Court itself to make such an important decision, rather than delegate the same to a smaller body of

Judges. Such a procedure according to us will be more broad-based and also rule

out any question of arbitrariness.

I respectfully submit that the opinion expressed by Their Lordships may please be re-considered as otherwise if what is expressed by Their

Lordships is to be implemented and the same would consume considerable time of all their Lordships and in that way, it may not be feasible and

practical. It is most respectfully submitted that this Hon''ble Court may be pleased to review the order passed in the Writ Petition.

4. I further most respectfully submit that Their Lordships have allowed the writ petition. However, there is no indication or observation as to

whether the fresh enquiry can be initiated against the concerned officer. It is the submission of this petitioner that the same may be considered by

this Hon''ble Court and liberty given to initiate de novo enquiry, as otherwise the Writ Petitioner may raise an objection as and when such enquiry

is initiated.

It is respectfully submitted that for the reasons stated above, it is prayed that this Hon''ble Court may be pleased to review the order made in W.P.

No. 22696 of 1993 dated March 8, 1994 and thus render justice''.

14. In the grounds of review, two grounds alone were raised, which are as follows:

1. It is most respectfully submitted that the observation made in para 12, namely, ''We feel that it will be proper for the Full Court itself to make

such an important decision, rather than delegate the same to a smaller body of Judges'', requires reconsideration.

2. The petitioner further submits that the Division Bench has not specifically made it clear regarding the opinion to initiate de novo enquiry against

the delinquent officer.

15. The Hon''ble Division Bench, after due and anxious consideration, held as follows:

Two points are sought to be clarified in this review application.

2. The first is that on the question of initiation of disciplinary enquiry. In paragraph 12 of the Judgment in W.P. No. 22696 of 1993 dated March 8,

1994, a Division Bench of this Court, to which one of us (Kanakaraj, J.) was a party, has observed as follows:

...We feel that it will be proper for the full court itself to make such an important decision, rather than delegate the same to a smaller body of

Judges...

The learned Special Government Pleader says that there is some room for doubt as to whether the initiation should be done by the Full Court or by

a small body. Having regard to the earlier opinion, expressed by the Division Bench on the question of taking disciplinary action, we are of the

opinion, that the same course should be adopted even in the case of initiation of disciplinary proceedings. In other words, the initiation can be done

either by the Full Court or by a smaller body of Judges, appointed by the Full Court.

3. The second point on which the learned counsel seeks clarification is whether the respondents can take de novo action because only a technical

flaw was pointed out by this Court. On this aspect, we are definitely of the opinion that this matter was in fact agitated by the learned counsel for

the writ petitioner and the Division Bench decidedly left this question open without observing one way or the other. It is also well known that a writ

of certiorari only removes the defective order from the files of the respondents. Therefore, we do not propose to say anything more or less on this

aspect. In this view of the matter, the review application is disposed of.

16. After the disposal of the review Application, once again the matter was placed before the Administrative Committee No. 1 consisting of the

Hon''ble Chief and P.S. Mishra, A. Abdul Hadi and A. Thangamani, JJ., as per the directions of the Hon''ble Chief Justice dated August 22, 1994.

On August 31, 1994, the Administrative Committee No. 1 considered the subject and resolved as follows:-

In paragraph 16 of the order dated March 8, 1994, a Division Bench of this Court passed in W.P.No. 22696 of 1993 preferred by the officer in

question, has held as follows:

16. Inasmuch as we have held that the constitution of the Hon''ble Enquiring Judges itself is invalid, we will not be justified in going into the merits of

the case or the other points raised in the writ petition. The result is, that the entire disciplinary proceedings are vitiated and consequently the

impugned order in Roc. No. 77/90 Con.B2, dated NIIimposing the minor punishment of stoppage of two increments with cumulative effect is

liable to be quashed and it is accordingly quashed. The Writ Petition is allowed in the above manner. There will be no order as to costs.

Again, in the order dated August 11, 1994 passed in Review Application No. 14 of 1994, it has been clarified as follows:

3. The second point on which the learned counsel seeks clarification is whether the respondents can take de novo action because only a technical

flaw was pointed out by this Court. On this aspect, we are definitely of the opinion that this matter was in fact agitated by the learned counsel for

the writ petitioner and the Division Bench decidedly left this question open without observing one way or the other. It is also well known that a writ

of certiorari only removes the defective order from the files of the respondents. Therefore, we do not propose to say anything more or less on this

aspect. In this view of the matter, the review Application is disposed of.

Having regard to the serious nature of the allegations, it is resolved to initiate the disciplinary proceedings afresh. The Registrar is directed to

prepare the draft charges and the Statement of Allegations and place the same before the Committee for approval".

17. Once again, a charge memo, was issued to the petitioner in Roc. 183/94/Con.B2 dated November 30, 1994 signed by the Registrar, High

Court. It is apparent on the face of the same that the entire 18 charges mentioned therein including charge No. 18 which was not proved are the

verbatim reproduction of the charges made in Roc.No.77/90/Con.B2 dated February 18, 1991. Aggrieved against the same, the petitioner filed

the present writ petition, which came up for admission before R. Jayasimha Babu, J., on February 20, 1995. The Learned Judge ordered notice of

motion returnable by two weeks and directed the learned Government Advocate to take notice. The Learned Judge has also granted interim stay

of all proceedings pursuant to the charge-sheet. The interim stay was extended by orders dated March 8, 1995, April 5, 1995 and June 13, 1995.

Thereafter, the matter came up before me on November 23, 1995, I admitted the writ petition and ordered the interim stay to continue until further

orders. Since the counter was filed and the matter was ready for enquiry, by consent of both parties, I directed the writ petition to be posted for

hearing on November 29, 1995. The learned Govt. Pleader produced the entire enquiry records at the time of hearing. The learned Govt. Pleader

was directed to produce the entire records. I have perused the same and also the affidavit and the counter affidavit filed by the parties besides

perusing the judgments cited. I have heard the arguments of Mr. G. Masilamani, learned Senior Counsel for the petitioner, and Mr. R.

Muthukumaraswami, learned Govt. Pleader, assisted by Mr. V.R. Rajasekaran, Govt. Advocate, for the respondent.

18. In this writ petition, the petitioner contended that even at the time of initiation of disciplinary proceedings, the Full Court must be involved and

that the Full Court must be first addressed and informed of the allegation made against the petitioner and that it is for the Full Court to deliberate

over the same and decide whether there is a case to be proceeded with by conducting an enquiry or whether to drop the same at that stage itself.

Therefore, only after the Full Court has come to a decision to proceed with the enquiry as aforesaid, the initiation of disciplinary proceeding could

be made either by the Full Court or by a smaller Committee of Judges constituted by the Full Court therefor. It is vehemently contended by Mr. G.

Masilamani, learned Senior Counsel, that the decision whether there is case to be proceeded with or not always rests with the Full Court. In other

words, according to him, the decision whether to take disciplinary action or not always rests with the Full Court and that the same cannot be

delegated to the smaller body of Judges.

19. It is seen from the records that the de novo enquiry initiated under the impugned order dated November 30, 1994 still suffers the violation of

Article 235 of the Constitution of India. It is seen that the Administrative Committee No. 1, on considering the matter, had framed the charges and

the Full Court had no part to play in the matter. It is for the Full Court to consider the allegations levelled against the petitioner, deliberate over the

same and decide whether there is a case to proceed with or not In Ground No. B, it is contended by the petitioner, that the Administrative

Committee No. 1, has decided everything and framed the charges and since the Full Court had not involved itself in making such an important

decision, the principles enunciated in Article 235 of the Constitution of India stand violated. In Ground No. C., it is stated that since some of the

Hon'ble Judges who constituted the earlier body of enquiry and constituted the earlier Administrative Committee No. 1, which took decisions on

the charges already framed as a result of which the earlier order of punishment was made, find place in the present Administrative Committee No.

1, which decided to have a de novo enquiry on the same charges, the whole proceedings will stand vitiated inasmuch as the element of bias is not ruled out and the principles of natural justice, equity and fair-play are violated.

20. The respondent filed a counter affidavit denying the allegations contained in the affidavit filed in support of the writ petition.

21. I have given my anxious consideration to the points raised on behalf of the petitioner and the submissions made by the learned Govt. Pleader on behalf of the respondent.

22. The main point raised on behalf of the petitioner is, that the procedure delineated in paragraph 12 of the order of the Division Bench reported in 1994 (II) MLJ 168 regarding taking a decision to initiate a disciplinary proceeding against Subordinate Judicial Officers has not been followed by the High Court. The salient features of the order of the Division Bench which had found unambiguous expression in para 12 are as follows:-

In other words, the contention is, that for the purpose of initiation of disciplinary proceedings, it is unnecessary for the Full Court to consider and

appoint a smaller committee. We do not agree with this contention because it would not be advisable to accept such a proposition and further the

Supreme Court in Tripathi's case (supra) did not make any such distinction.

We say, that it would not be advisable because, the Full Court must be informed of the allegations and deliberate over the same and decide

whether there is a case to be proceeded with, by conducting an enquiry or whether to drop the same at that stage itself.

We feel that it will be proper for the Full Court itself to make such an important decision, rather than delegate the same to a smaller body of

Judges. Such a procedure, according to us, will be more broad-based, and also rule out any question of arbitrariness.

23. It would be apparent from the aforesaid clear and categorical findings of the Division Bench, that before initiating disciplinary proceedings

against a Judicial Officer for misconduct, the Full Court should deliberate over the same and decide whether there is a case to be proceeded with

by conducting an enquiry or whether to drop the same at that stage itself. Therefore, only after the Full Court has come to a decision to proceed

with the enquiry as aforesaid, the initiation of disciplinary proceeding could be made either by the Full Court or by a smaller Committee of Judges

constituted by the Full Court therefor. The aforesaid procedural requirement delineated by the Division Bench is imperative and binding on the administrative side of the High Court.

24. Mr. G. Masilamani, Learned Senior Counsel for the petitioner, contended that after the earlier enquiry proceedings were quashed by the

Division Bench, the matter was not placed before the Full Court and the Full Court was not informed of the allegations made against the petitioner

and that the Full Court did not deliberate over the same and decided to re-initiate the disciplinary proceedings. The said contention has been raised

by the petitioner in Ground No. B. In the counter affidavit filed by the Registrar, the abovesaid allegation that the Full Court was not involved in

making the decision to proceed against the petitioner by way of disciplinary proceedings as required in the Division Bench Order, had not been

denied. In paragraph 15 of the counter affidavit, it is mentioned as follows:

Inasmuch as the charges were approved by the Hon"ble Administrative Committee I, which has been constituted by the Full Court, and this

Hon"ble Court while allowing the writ petition filed by the petitioner earlier had not gone into the merits of the case, a fresh enquiry can be initiated

against the petitioner. Since the Hon"ble Administrative Committee I has been constituted by the Hon"ble Full Court, it is not necessary that the

initiation of enquiry has to be approved by the Hon"ble Full Court and therefore there is no violation of Article 236 of the Constitution of India.

25. Mr. R. Muthukumaraswami, learned Govt. Header contended as follows;

a) Article 235 of the Constitution relating to control over Subordinate Courts has been the subject matter of judicial interpretation by the Supreme

Court. In Tripathi's case (supra), the Supreme Court has held that the control vested in the High Court over Subordinate Judiciary implies in it a

power to constitute and permit one Judge or some of the Judges to act on behalf of all. The Supreme Court proceeded to hold that there was no

delegation involved in such a situation and that the decision taken by the said smaller body amounted to the decision of the Full Court. Therefore,

as per the judgment of the Supreme Court in Tripathi's case (supra). If the Full Court has appointed one Judge or a Committee of Judges to

exercise certain powers and functions, then, the decision taken by such smaller body would amount to decision of the Full Court. Therefore, in the

instant case, the Full Court has constituted Administrative Committee No. 1 to be incharge of all matters relating to District Judges. The minutes of the meetings, and the Rules have been submitted already, which would go to show that the full court has appointed the Administrative Committee to deal with the District Judges including disciplinary proceedings relating to them. In the circumstances, the decision of the Administrative Committee No. 1 taken in the matter would amount to the decision of the Full Court and consequently, the impugned memo issued at the instance of the Administrative Committee is valid.

b) As regards the judgment of the Division Bench reported in 1994 (II) MLJ 168 it is submitted by the learned Govt. Pleader that it no doubt

contains observations to the effect that the Full Court must be informed of the allegations and that the Full Court must decide whether it is a case to

be proceeded with or not. However, the respondent had filed a Review Application in the said writ petition and this Court by order dated August

11, 1994 has reviewed the said judgment. In paragraph 2 of the order in review, the Division Bench has held that the initiation can be done either

by the Full Court or by a smaller body of Judges appointed by the Full Court. This order in review would make it clear that the initiation can be

done even by a smaller body of Judges appointed by the Full Court. It may not be correct to construe the order in review as one restricting in its

operation to the issue of a charge memo alone and not with reference to the taking of a decision to pursue the matter or not. In other words, the

order in review should be construed to dilute the entire observations contained in paragraph 12 of the judgment of the Division Bench. It may be

noticed that the judgment of the earlier case reported in 1994 (II) MLJ 168, concerned the validity of the initiation of action by two Hon"ble

Judge, who were appointed only by the Hon"ble Chief Justice. It is in this context that the Division Bench allowed the Writ Petition since, as per

the Supreme Court judgment, the control over Subordinate Judiciary vests in the Full Court, which can be exercised by the Full Court or by one or

more Hon"ble Judges appointed by the Full Court. In view of the fact that the Hon"ble Enquiring Judges were appointed earlier by the Hon"ble

Chief Justice alone, this Court struck down the entire proceedings. While doing so, this Court has referred to the constitution of Administrative

Committee in paragraph 14 of the judgment. Therefore, in the light of the order in review, it would be obvious that this Court had diluted the observations contained in paragraph 12 and has held that it is open to the Full Court or any body of Judges appointed by the Full Court to initiate disciplinary proceedings. In the circumstances, the Administrative Committee which has been appointed by the Full Court is competent to take a decision and issue the charge memo. To hold otherwise would amount to construing and reading the judgment of this Court in a manner which would be contrary to the ratio laid down by the Supreme Court in Tripathi's case(supra). It is, therefore, submitted by the learned Govt. Pleader, that there is no merit in the contention of the petitioner.

c) It is further submitted that the order passed by this Court earlier reported in 1994 (II) MLJ 168, read with the review order would go to show that the initiation can be done by a smaller body of Judges appointed by the Full Court. The word "initiation" would include in it the decision to take action followed by the actual issuance of the charge memo. Therefore, in the light of the order in review enabling the smaller body appointed by the Full Court to initiate disciplinary proceedings, it would be obvious that the said body can take a decision and issue the charge memo. Having regard to the judgment of the Supreme Court in Tripathi's case (supra) that the decision of a smaller body appointed by the Full Court amounts to a decision of the Full Court itself, and having regard to the observations found in paragraph 14 of the judgment reported in 1994 (II) MLJ 168, read with the order in review, it would be clear that the decision to pursue action followed by the charge memo taken by the Administrative Committee amounts to a decision of the Full Court, which is valid. Therefore, it is submitted by the learned Govt. Pleader that there is no merit in the contention of the petitioner.

26. I am unable to accept the contentions of the learned Govt. Pleader. Paragraph 15 of the counter affidavit extracted above would make it clear that the Full Court was not addressed at all in this regard. The Procedure laid down in the inter party binding adjudication should have been strictly followed in letter and spirit by the administrative side of the High Court. The Full Court ought to have been addressed in this regard and a decision to proceed against the petitioner ought to have been arrived before the matter

could be referred to the Administrative Committee No. 1 to initiate disciplinary proceedings. Failure to comply with the aforesaid requirements, in my view, would certainly vitiate the disciplinary proceedings, since, in the absence of the decision of the Full Court to proceed against the petitioner, the Administrative Committee No. 1 cannot initiate disciplinary proceedings by-passing the Full Court.

27. The findings and observations of the Division Bench that the Full Court should be addressed first and the same should be deliberated by the Full Court before making the crucial decisions whether to proceed or not to proceed against the judicial officer concerned has been thoughtfully incorporated to satisfy the letter and spirit of Article 14 of the Constitution of India, viz., to avoid arbitrariness in taking decision to initiate disciplinary proceedings against the delinquent Judicial Officer.

28. I may point out at this stage that the Subordinate Judicial Officers are frequently subjected to indiscriminate and unprincipled attack by unscrupulous and unsuccessful litigants. The independence of Subordinate Judiciary requires that the Subordinate Judicial Officers should not be subjected to face disciplinary proceedings on the satisfaction of a few of the Hon'ble Judges of the High Court alone. Both real and apparent arbitrariness in initiating disciplinary proceedings against the Subordinate Judicial Officers who are already over worked and less cared and who function under grossly inadequate and appalling infrastructure and facilities, shall expose them to constant threat and fear of disciplinary proceedings which indeed shall undermine the independence of Judiciary. Therefore the Subordinate Judicial Officers should be rest assured that they shall be called upon to face disciplinary proceedings only by the collective wisdom of the Full Court of High Court. It is with this laudable objective, the Division Bench made it succinctly clear in its judgment as follows:

We feel that it will be proper for the Full Court itself to make such an important decision, rather than delegate the same to a smaller body of Judges. Such a procedure, according to us, will be more broad-based and also rule out any question of arbitrariness. It is therefore, our considered view that even at the time of initiation, the Full Court must be involved in the exercise of appointing a smaller committee

29. The aforesaid clear, categoric and unambiguous findings and observations of

the Division Bench are binding on the High Court, in any event, in so far as the petitioner is concerned, since the judgment in question is an inter-party judgment which has become final and binding. There can, therefore, be no rhyme, reason or logic to disagree with the aforesaid findings and observations of the Division Bench.

30. It is contended by Mr. R. Muthukumaraswami, learned Govt. Pleader that in view of the order in R.A.No. 14 of 1994, the duties cast on the

Full Court could be exercised by a smaller committee of Hon"ble Judges constituted for that purpose and therefore, the Administrative Committee

No. 1, which was appointed by the Full Court, can discharge both the functions, viz., to deliberate and decide whether to proceed against the

delinquent Subordinate Judicial Officer or not, and if decided yes, to proceed and initiate disciplinary proceedings by framing charge memo, etc.,

31. A careful reading of the orders made in the writ petition and in the review application do not give any room for holding that the entire

observation contained in paragraph 12 of the order had been obliterated by the order in the review application. The Division Bench while disposing

of the review application only clarified that the initiation of disciplinary proceedings can be done by the Full Court or by a smaller Committee of

Judges nominated by the Full Court. The word ""initiation"" in the context in which it has been used in the review order only mean and indicate the

proceedings are to be taken after the Full Court has decided to proceed against the delinquent officer after due deliberation. The Division Bench

by its order made in the review application only clarified the order in the main writ petition that the actual initiation of disciplinary proceedings,

which commences with the issuance of show cause memo, could be done either by the Full Court or by a smaller committee of Judges constituted

by the Full Court. However, the important duty to take a decision viz., to proceed or not to proceed with the disciplinary proceedings was kept

intact with the Full Court.

32. I have already extracted the grounds of review and the affidavit filed by the Registrar as per the directions of the Division Bench explaining the

grounds on which a review was sought for. No new material or circumstance was placed before the Division Bench in the review application which

warranted the reversion of the earlier stand of the Division Bench in the writ

petition. In the review application, a clarification alone was sought for as seen above. If the contention of the learned Govt. Pleader is accepted, it would virtually amount to total deletion of the findings in paragraph 12 of the order in the main writ petition. Such a contention, in my opinion, cannot at all be allowed to be put forth. The Order passed in the review application shall not admit such a reversal of the entire earlier observations and findings. Therefore, the procedure laid down by the Division Bench viz., to leave the decision to proceed or not to proceed with the disciplinary proceedings against a Subordinate Judicial Officer, to the collective wisdom of the Full Court instead a few of the Judges, is indeed, a most welcome, applaudable and appropriate procedure when considered in the context to preservation and protection of the independence of Subordinate Judiciary even against possible administrative arbitrariness. There is absolutely no justification nor any need to deviate from the thoughtful decision of the Division Bench. For all these reasons, the argument of the learned Govt. Pleader do not merit or inspire acceptance and therefore the same is rejected.

33 It would not be proper to place reliance or give precedence to the decision of the Full Court made in its administrative side and to disregard the order of the Division Bench of this Court made in its judicial side. The order made by the Division Bench alone shall prevail over the administrative decision of the Full Court. Moreover, once a rule of procedure has been envisaged by the High Court in its judicial side on any matter, the High Court in its administrative side has to follow the same, setting a good example to all others in this regard.

34. For all the aforesaid reasons, I am of the view, that the non-compliance with the requirements/directions stipulated in the order of the Division Bench viz., to place the matter before the Full Court, has vitiated the entire proceedings, which are impugned in the present writ petition. Therefore, the impugned order is liable to be set aside.

35. Before parting with this case, I would like to say the following. The charges against the petitioner relate to the period from 1987 to 1989 the proceedings were initially commenced as early as February 18, 1991 and since then, the petitioner is under the clouds of corruption and disputed integrity would cause unbearable mental agony and distress to the officer

concerned. Further litigant public and the members of the Bar, who would have come before his Court in search of justice, would have looked at him with suspicion as to whether they would get justice from him.

Such a position that top for a long period of time, is itself a rigorous punishment. Therefore, protracted disciplinary enquiry against a Judicial Officer should be avoided not only in the interest of the concerned judicial Officer but also in the interest of inspiring confidence in the minds of the litigant public and the members of the Bar on the Presiding Officer and in the judicial system

36. Insofar as the petitioner is concerned, he had raised at the earliest point of time the preliminary issue relating to the constitutional validity of the appointment of the Committee of Hon''ble Justice by the Hon''ble Chief Justice of the High Court. However, the objection was over-ruled by the Committee of Hon''ble Judges. This issue was taken up by the petitioner in W.P.No. 22696 of 1993 and his objections were upheld by a Division Bench of this Court, consisting of K. Venkataswami, J. as he then was, and J. Kanakaraj, J. Nevertheless, once again the same charges including charge No. 18 which was dropped were re-framed by an order dated November 30, 1994, which is the subject matter of challenge in the present writ petition, once again on the technical ground that the observations and findings of the Division Bench have not been adhered to by the High Court before framing the charges. In view of the fact that the charges framed for the second time is also vitiated due to non-compliance with the observations and findings of the Division Bench, it would not be just and proper to subject the petitioner to yet another charge in future after rectifying the error.

37. The petitioner, as stated by him in his affidavit, has been put to enormous mental agony and suffering on account of the protracted disciplinary proceedings, for no fault of the petitioner. Hence, he ought not be subjected to endless disciplinary proceedings, causing him mental agony and disrespect amongst the litigant public, members of the Bar and the public in general. Even though the earlier disciplinary proceedings were held ab initio void by the Division Bench, nevertheless, the fact remains that the petitioner was not found guilty of pecuniary corrupt service but he was only found to be guilty of causing irregular appointments inconsistent with the Rules.

For these irregularities, the Full Court decided to impose the punishment of withholding of two increments without cumulative effect, which is a minor punishment.

38. After the disposal of the present writ petition, if the disciplinary proceedings are recommenced, the petitioner would be put to unjust and unreasonable prejudice since he would be compelled to face yet another enquiry. Further, the petitioner had been made to disclose his defence and the nature and substance of cross-examination of the witnesses during the earlier enquiry proceedings. In this fact situation, he would not be able to effectively cross-examine the witnesses for the second time. Since the witnesses would come prepared to answer the plausible questions during the cross-examination. It will give room for the witnesses to improve their version, which will definitely prejudice the petitioner and which in turn would amount to unfair trial. In these circumstances, it would not be just and proper, in the interest of justice, to ask the petitioner to face yet another enquiry more than three years after the earlier enquiry and about six years after the enquiry has commenced against him.

39. For all the above reasons, I am of the view, that it is but necessary to draw the curtain and to put an end to the enquiry. The petitioner had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and suffering of the petitioners due to the protracted disciplinary proceedings would be much more than the punishment of stoppage of two increments without cumulative effect.

For the repeated mistakes committed by the High Court in the procedure for initiating the disciplinary proceedings, the petitioner should not be made to suffer. Even assuming that the enquiry proceedings are recommenced, the ultimate punishment that may be imposed on the petitioner may not be more onerous than the stoppage of two increments without cumulative effect viz., the punishment imposed on the previous occasion. For imposing this minor penalty, the petitioner need not be subjected to yet another enquiry since he was already put to considerable mental agony and sufferings besides lot of expenditure for litigating before this Court more than once.

40. In the result, the writ petition is allowed and the impugned order is set aside in the interest of justice and fair-play. There will, however, be no

order as to costs.