
(1994) 03 MAD CK 0013
In the Madras High Court

T.S. Sankaranarayanan

APPELLANT

Vs

The High Court of Judicature

RESPONDENT

Date of Decision : 08-03-1994

Acts Referred:

Constitution of India, 1950 — Article 235

Citation : (1994) 2 MLJ 168 : (1994) WritLR 484

Judgement

1. The petitioner joined the Tamil nadu State Judicial Service as a District Munsif. In due time he was promoted as a Subordinate Judge Grade II

and then as a District Judge, Grade I. He has put in a total number of 24 years of service. While he was serving as a District and Sessions Judge,

of Ramanathapuram at Madurai, he was served with a Confidential Official Memorandum dated 18.2.1991 asking him to show cause why

disciplinary action should not be taken against him on the basis of certain allegations which were catalogued, as 18 in number. This memorandum

was issued by the two Hon"ble Judges of the High Court (here in after called ""the Hon"ble Enquiring Judges""). He submitted his explanation on

25.3.1991. By a communication dated 18.2.1991 the Hon"ble Enquiring Judges held that the explanation was not satisfactory and proceeded to

frame 18 charges against the petitioner. We do not propose to set out the 18 charges because we are upholding a jurisdiction issue raised by the

petitioner and therefore, we are of the opinion that it would not be proper to express any opinion on the merits of the case. The petitioner

submitted his explanation to the charges on 9.10.1991. The Hon"ble Enquiring Judges informed the petitioner that a departmental enquiry would

be commenced on 21.12.1991 at 1.30 p.m. For the very same reason mentioned above, we do not also propose to deal with the arguments

relating to the lack of proper opportunity for the petitioner to defend himself in the departmental enquiry. To proceed with the narration the

Hon"ble Enquiring Judges submitted their findings on 16.4.1992 on each of the charges. Thereafter the petitioner received a communication

OROC. No. 27/90/Con B.2, dated Nil from the respondent stating that the Administrative Committee No. 1 of the High Court had considered the

findings given by the Hon"ble Enquiring Judges and the further representation submitted by the petitioner and the matter was placed before the Full

Court which decided to pass the impugned order, awarding the minor penalty of withholding two increments without cumulative effect. The Full

Court also decided to enter the punishment in the confidential records of the officer. The writ petition is for the issue of a writ of certiorari to call for

the said communication from the respondent and quash the said proceedings.

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

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

raised by the petitioner on merits have been dealt with in detail by the respondent in the counter-affidavit. As we have already mentioned, we did

not propose to go into the merits of the case. According to the respondent, the constitution of the Hon"ble Enquiring Judges by the Hon"ble Chief

Justice of the High Court alone was perfectly in order. It is also pointed out in the counter-affidavit that the various points raised in the affidavit of

the petitioner have been dealt with, by the Hon"ble Enquiring Judges and the counter-affidavit speaks to refer to the report of the Hon"ble

Enquiring Judges as part of the counter-affidavit. The minutes of the Administrative Committee No. 1 dated 5.10.1993, was despatched to the

petitioner only on 20.1.1994. One other point that is mentioned in the counteraffidavit relates to the imposition of the punishment under Rule 17 (a)

of the Tamil Nadu Civil Services (Classification Control and Appeal) Rules. It is stated that no punishment was imposed under Rule 17(b) and

therefore the validity of the appointment of the Hon"ble Enquiring Judges does not at all arise for consideration.

3. The reason why we have refrained from going into the merits of the case or the arguments relating to the lack of opportunity and the violation of

principles of natural justice is, because one of the grounds raised in the writ petition relates to the very appointment of the Hon''ble Enquiring

Judges to take up the disciplinary proceedings. The contention is that the Hon''ble Enquiring Judges were appointed only by the Hon''ble the Chief

Justice and not by the Full Court. It is not disputed that the entire proceedings were conducted by the Hon''ble Enquiring Judges and it is only

after the submission of the findings on the 18 charges that the Administrative Committee No. 1 considered the matter and placed the papers before

the Full Court for a final decision on the award of the punishment. Therefore, if the contention of the petitioner that the appointment of the Hon''ble

Enquiring Judges by the Hon''ble the Chief Justice alone, is held to be illegal and contrary to the mandate of the Constitution of India, then it follows

that the proceedings are vitiated and it would not be in order on our part to look into the findings of the Hon''ble Enquiring Judges for any purpose.

It is precisely for this reason that we have decided to consider, first the validity of the said ground which goes to the root of the matter. Based on the

finding on that question, it would be possible for us to decide on the further course of action with particular reference to the other points and grounds

raised in the writ petition.

4. The point regarding the validity of the constitution of the Hon''ble Enquiring Judges is projected in the following manner. 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. In other words, the power to initiate disciplinary proceedings against the Judicial Officer vests only in the High Court. Article 226 of the

Constitution of India says that every High Court shall consist of a Chief Justice and such other Judges as the President may from time to time deem

it necessary to appoint. Therefore the word ""High Court"" in Article 235 of the Constitution of India has to be understood as the full complement of

the Judge 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.

5. On this issue, it is necessary that one should be clear the facts of the present case. The origin of the disputed disciplinary action against the

petitioner arose in the following manner:

The Special Officer, Vigilance Cell, High Court, Madras submitted a report based on a series of anonymous and pseudonymous complaint

received by the Vigilance Office. On 27.7.1990 the Hon'ble the Chief Justice passed orders directing initiation of departmental action against the

petitioner "on all aspects. A note was circulated to the Hon'ble the Chief Justice on the question of appointing an Enquiring Committee. By an order

dated 6.8.1990, the then Hon'ble Chief Justice constituted the Hon'ble Mr. Justice Srinivasan, and the Hon'ble Mr. Justice Abdul Hadi as the

Committee to conduct the departmental enquiry. It is thereafter that the departmental proceedings commenced with the Official Memorandum

dated 18.2.1991 issued by the Hon'ble Enquiring Judges to which we have already made a reference. Therefore, we proceed on the premises and

it is admitted by the learned Special Government Pleader that the Full Court did not appoint the Hon'ble Enquiring Judges. It is also admitted by

the Special Government Pleader that the Full Court had not delegated that authority to anybody. The question in the circumstances therefore, is

whether this procedure has vitiated the entire departmental proceedings against the petitioner.

6. In elaborating the said contention Mr. G. Masilamani learned Senior Counsel for the petitioner takes us through Articles 214, 215, 216, 233

and 235 of the Constitution of India. The expression "High Court" in Article 235 of the Constitution of India has been the subject matter of

interpretation by various courts. Reference is first made to *Batuk Deo Pati Tripathi v. State of Uttar Pradesh* AIR 1977 N.O.C. 279 All. .We will

refer to the facts of the case only because this judgment of the Full Bench of the Allahabad High Court has been reversed by the Supreme Court in

State of Uttar Pradesh Vs. Batuk Deo Pati Tripathi and Another, . The petitioner in that case was serving as a District Judge in the State of Uttar

Pradesh. In pursuance of Rule 5(c) of the Rules framed by the High Court, the Administrative Committee of the High Court recommended the

case of the petitioner for compulsory retirement. The recommendation of the Administrative Committee was circulated for information to all the

other learned Judges of the High Court. But the circulation was made after the recommendation has been communicated to the State Government.

On the said recommendation the petitioner was retired from service. The Allahabad High Court held that the order of compulsory retirement was

vitiated because it was passed on the opinion of the Administrative Committee and cannot be equated to the opinion of the High Court within the

meaning of Article 235 of the Constitution of India, because the High Court included the entire body of Judges. The Allahabad High Court went to

the extent of saying that by framing rules the High Court cannot delegate its power of control to a Committee of Judges of the court. According to

them it was an abdication of power vested in them. This view of the Allahabad High Court was reversed by the Supreme Court on the ground that

the full complement of Judges, constituting a High Court can constitute a committee comprising of a smaller body of Judges to scrutinise and make

representations in respect of the service condition of a District Judge. We will revert back to this judgment after noticing the other judgment on this

aspect of the case because in our opinion, this judgment provides the key to solve the problem posed before us. In *B. Raniajaneyalu v.*

Government of Uttar Pradesh (1982) 2 S.L.R. 478, a Full Bench of the Andhra Pradesh High Court dealt with a case of a District Munsif. Against

the District Munsif an enquiry was conducted by the Subordinate Judge and the matter was placed before a Committee of High Court Judges and

not before the whole body of Judges. It is on the basis of the recommendation of the Committee that a show-cause notice was issued to the

District Munsif and he was ultimately removed from service. The question was whether the consideration by a committee of Judges was proper or

not. Before the Andhra Pradesh High Court, the further question was whether the constitution of a smaller body of Judges could be done only by

framing rules as in *Tripathi's case* AIR 1977 N.O.C. 279 All. decided in *State of Uttar Pradesh Vs. Batuk Deo Pati Tripathi and Another*, . The

relevant passage of the judgment is as follows:

By laying emphasis on the use of the expression "rules" in these passages, it was argued that the decision of the Supreme Court in the above case

should be regarded only as holding that the High Court can entrust the administrative functions to a smaller body of Judges only by Rules framed

by the High Court. We are unable to agree with this contention. Under Article 235, the Administrative Control is vested in the High Court. As

pointed out by the Supreme Court, in the above case, it is necessary having regard to the very nature of the power vested in the High Court that

the High Court should be empowered to authorise a smaller body. Otherwise, as pointed out by the Supreme Court if the whole High Court is to consider every one of the matters, the exercise of the control instead of becoming effective will tend to cause delay and confusion in the administration of justice in the State and will frustrate the very object of the salient provision contained in Article 235. It is open to the High Court to devise the manner and method by which the power is entrusted to a smaller body. There is nothing in the language of Article 235 which indicate that it is obligatory on the part of the High Court to do so only by framing rules. There is no reason why it cannot confer this power by means of a resolution.

It is significant to note that in that case the smaller body of Judges constituting the Committee was appointed only by the Chief Justice. The question whether the Chief Justice alone can appoint a committee or the Full Court should have appointed a Committee was apparently not raised and hence not discussed by the Andhra Pradesh High Court. But on facts were find that by resolution dated 20.4.1972, at a meeting of the Hon"ble Judges, the constitution of different committees was left to the discretion of the Chief Justice. In other words, the Full Court had authorised the Chief Justice to appoint a Committee and thereafter ""Disciplinary Committee" was constituted by the Hon"ble the Chief Justice. It is only by referring to the resolution of the Full Court of Judges dated 10.4.1972, that the Andhra Pradesh High Court had upheld the recommendation by the Disciplinary Committee and further held that such a recommendation was the recommendation of the High Court. In *Anandilal v. State of Rajasthan* 1975 Lab.I.C. 1339, when a complaint was received against a Munsif-Magistrate, the Chief Justice of the Rajasthan High Court appointed our learned Judge of the High Court as the Enquiring Judge. The Enquiring Judge framed charges and ultimately a show-cause notice was issued to the District Munsif as to why the punishment of removal should not be imposed. It is this notice that was challenged before the Rajasthan High Court and the learned Counsel for the petitioner has relied on various passages in this judgment which ultimately held that the appointment of the Enquiring Judge was not in order. We will only refer to the relevant aspects of the case. In the Rajasthan

High Court also there was a resolution by the Full Court on 30.10.1971. It was decided to delegate certain powers either to the Chief Justice or

to an Administrative Judge or to the nominee of the Chief Justice. But it is seen from the facts of the case that before such a resolution was adopted

by the Full Court the Enquiring Judge had been appointed because in that case, disciplinary proceedings had commenced in the year 1963.

Therefore, the Rajasthan High Court was faced with an identical question as to whether the appointment of an Enquiring Judge by the Chief Justice

alone was proper or not. The following passage makes the position absolutely clear:

It is not disputed that Mr. Justice Bhargava was nominated by the Chief Justice under the powers delegated to him by the Governor under Rule

15(1) of the Rules of 1958 by issuing a notification on 16.9.1960 and as such Mr. Justice Bhargava while acting as a disciplinary authority, cannot

be said to be a delegate of the High Court (Full Court), under Article 235 of the Constitution. In our opinion the Chief Justice alone was not

competent under Article 235 to act as a disciplinary authority for taking action against the member of the Rajasthan Judicial Service and therefore,

he alone was not competent to appoint Mr. Justice Bhargava as a disciplinary authority by issuing standing order on January, 23, 1963, vide

document No. 2 on the record. The initial appointment of Mr. Justice Bhargava was not in accordance with Article 235 and therefore, the

proceedings taken by Mr. Justice Bhargava stand vitiated.

The Rajasthan High Court went into the further question of ratification by the Full Court and held that an act which is void at its very inception

cannot be ratified subsequently.

7. The next judgment relied on by the petitioner is Jagdish Kumar Sinha v. The State of Rajasthan (1980) 2 S.L.R. 351. In this case also, the

Rajasthan High Court has referred to the Full Court resolution dated 30.10.1971 regarding disciplinary proceedings of Subordinate Judicial

Officers. A reference to the said resolution shows that Clause 3 provided as follows:

3.(1) The Administrative Judge or a Judge nominated by the Chief Justice shall have the power to take disciplinary action and to impose on a

Judicial Officer any of the penalties enumerated in Rule 14 of the Rajasthan Civil

Services (Classification, Control and Appeal) Rules, 1958,

except those of removal and dismissal from service.

After explaining the scope of the resolution of the Full Court, the Rajasthan High Court proceeded to say that once the Chief Justice initiates a

disciplinary action against a Judicial Officer and nominates an Administrative Judge to conduct the disciplinary enquiry, thereafter he becomes

functus officio in so far as the disciplinary action is concerned. In that case after appointing a Judge to conduct the enquiry against a Judicial Officer,

the learned Chief Justice himself passed an order exonerating the officer. According to the court, the order of the learned Chief Justice was not

legal because he had become functus officio. In that view of the matter, the court further held that the disciplinary proceedings against the

concerned officer could be resumed and continued by the Judges, nominated for conducting the disciplinary enquiry. The only observation of the

Rajasthan High Court which is of relevance to this case is as follows:

According to Article 235, control over judicial officers is vested in the High Court and "High Court" under Article 235 means the Chief Justice and

all other Judges of the High Court. It therefore, follows that the control is vested in the full Court. The Full Court passed Resolution dated October,

30,1971 regarding disciplinary proceedings against Judicial Officers.

8. A careful analysis of the above case commencing from the judgment of the Supreme Court, in Tripathi's case AIR 1977 N.O.C. 279 , enables

us to lay down three propositions as follows:

(i) If there are rules framed by the High Court under one or other of the Articles of the Constitution of India, referred to above, then the disciplinary

action against the Subordinate Judicial Officers can be proceeded in the manner provided by the Rules.

(ii) If no such rules are framed by a High Court, even then, it is open to the Full Court, by resolution, to appoint a smaller body of Judges as

constituting a committee to initiate and take disciplinary proceedings against a Subordinate Judicial Officer.

(iii) In the absence of Rules or resolution by a Full Court the Chief Justice by himself, cannot appoint a smaller body constituting the disciplinary

committee or the Enquiring Committee.

9. Had things remained as above there could not have been any difficulty to give our conclusions on the points raised in the case. But there is yet another judgment of the Supreme Court of India rendered by two Hon"ble Judges in Registrar, High Court of Madras Vs. R. Rajiah, . Certain observations in this judgment are strongly relied upon by the respondent to contend that a committee appointed by the Chief Justice can also initiate and take disciplinary action. This judgment related to a District Munsif and a Sub Magistrate in the State of Tamil Nadu. Both the officers were compulsorily retired from service by the High Court of Madras in public interest. The principal contention urged by the petitioner in that case was that the High Court had no power to compulsorily retire members of the Tamil Nadu State Judicial Service and that such an order could be passed only by the Governor of the State. In other words, the High Court could only make a recommendation and the order has to be passed by the State Governor. On this question there was difference of opinion between two learned Judges who constituted the Division Bench. They however agreed that there were no materials to compulsorily retire the officers. The Division Bench also held that the Constitution of a review committee which recommended compulsory retirement, was not also validly constituted. The Apex Court held that the order of compulsory retirement could have been passed only by the appointing authority namely, the Governor of the State. The Apex Court also upheld the judgment of the Division Bench that there were no materials to compulsorily retire the officers. The most relevant aspect of the case, in the context of the present writ petition, related to the constitution of the review committee in the case of one of the officers namely, K. Rajeswaran. It is noticed that the review committee was appointed by the Chief Justice and not by the Full Court. On this aspect of the case the Apex Court reversed the findings of the Division Bench and in doing so observed as follows:

In regard to the case of the other respondent, namely, K. Rajeswaran, the High Court took the view that the constitution of the Review Committee by the Chief Justice and not by the Full Court was illegal. We are unable to accept the view of the High Court. We fail to understand why the Chief Justice cannot appoint a Review Committee or an Administrative Committee. But in one respect the High Court is, in our opinion, correct namely,

that the decision of the Review Committee should have been placed before a meeting of the Judges. In the case of the respondent, K. Rajeswaran,

the decision and recommendation of the Review Committee was not placed before the Full Court meeting. Nor is there any material to show that

the same was circulated to the Judges. In that sense, the recommendation of the review committee was not strictly legal.

10. Mr. Sadasivam, learned Special Government Pleader strongly relies on the above passage and contends that the appointment of the Hon"ble

Enquiring Judges in the present case by the Hon"ble the Chief Justice, is perfectly in order. He also buttressed his argument by saying that the

ultimate decision of imposing the penalty, was taken by the Full Court. We were indeed in an unenviable position at the first blush, as to how to

reconcile the earlier line of cases referred to by the petitioner and the latest judgment of the Supreme Court in Registrar, High Court of Madras Vs.

R. Rajiah, . However, when we are able to find out the proper course which should be adopted. It is in this connection that we had earlier stated

that we will revert back to the judgment of the Supreme Court in State of Uttar Pradesh Vs. Batuk Deo Pati Tripathi and Another, . Tripathi"s

case, was presided over by a Constitution Bench comprising of five Hon"ble Judges. Therefore, if the issue in question had been well and truly

posed and decided by the Constitution Bench, we do not think the observation of the two Hon"ble Judges of the Supreme Court in Rajiah"s case,

can prevail over the former. We have already referred to the facts of the Tripathi"s case. Suffice it to remind ourselves that when the petitioner in

that case was functioning as a District Judge, he was compulsorily retired on the recommendation of an Administrative Committee of the High

Court. After referring to the rules framed by the High Court, the Apex Court reversed the finding of the Allahabad High Court on the main question

that the appointment of a smaller body of Judges under the rules framed by the High Court, would not amount to delegation or abdication of the

powers of the High Court. One of the points which was posed for consideration is as follows:

The order is illegal inasmuch as it was passed on the recommendation of the Administrative Committee, while Article 233 of the Constitution

requires consultation by the Governor with the entire High Court and not with a Committee consisting of a few Judges of the Court.

The ratio of the Constitution Bench of the Supreme Court on the above question posed for consideration, is seen from the following passage:

The relevant part of Article 235 of the Constitution provides that the control over District Courts and courts subordinates thereto shall be vested in

the High Court. Since Article 226 provides that every High Court shall consist of a Chief Justice and such other Judges as the President may from

time to time deem it necessary to appoint, Article 235 has to be construed to mean that the control over District Courts and Courts Subordinate

thereto is vested in the entire body of Judges who together constitute the High Court and not in the Chief Justice as representing the High Court or

an Administrative Judge or a smaller body of Judges acting as an Administrative Committee. But though the control over subordinate courts is

vested institutionally in the High Courts by Article 235, it does not follow that the High Courts have no power to prescribe the manner in which that

control may in practice be exercised.

[Italics supplied]

The Apex Court proceeded to say,

The limited object of the present discussion is to show that High Courts possess the power under Article 235 to prescribe the manner in which the

control over subordinate courts vested in them by that article may be exercised.

Then again,

In other words, if by Article 235 the control over Subordinate Courts is vested in the High Court as a whole, is it permissible to the High Court to

provide by framing a rule that a matter falling within the area of control may be decided, not by the whole court, but by a Judge or a Committee of

Judges acting on behalf of the court That is the first question which the Full Bench of the High Court formulated for its consideration.

Dealing with the aspect as to whether the whole High Court is required to consider every one of the matters under their control, the Apex Court

observed that such a construction would frustrate the very object of the salient provisions contained in the Article 235 and ought to be avoided.

Observed the Supreme Court:

In fact, it is no exaggeration to say that the control will be better and more effectively exercised if a smaller committee of Judges has the authority of

the court to consider the manifold matters falling within the purview of Article 235. Bearing in mind therefore the nature of the power which that

article confers on the High Courts, we are of the opinion that it is wrong to characterise as ""delegation"" the process whereby the entire High Court

authorises a Judge or some of the Judges of the court to act on behalf of the whole Court.

[Italics supplied]

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 smaller 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 circumstances 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 opposite:

The ratio decidendi 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 Courts

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 AIR 1977 N.O.C. 279 , 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.

14. There is yet another minor question which has been referred to by the learned Counsel for the petitioner. That is, even when the Full Court appoint a Disciplinary Committee for the purpose of dealing with all cases against a particular category of officers like the District Judges, it will not

be open to the Chief Justice or the Registry to straightaway send a complaint involving a district Judge to the said Committee. This is because at present in the High Court of Madras, various Committees have been appointed by the Full Court. The Administrative Committee No. 1 looks after all cases relating to the District Judges. This is precisely the reason why at the final stage of considering the report of the Hon''ble Enquiring Judges, the matter was referred to the Administrative Committee No. 1, and then passed on to the Full Court. For the purpose of this case, we do not think that it is necessary for us to decide the issue and as and when a question arises, we have no doubt, in our mind, that the Full Court will decide the issue in an Administrative manner.

15. In fine, we hold that the appointment of the Hon''ble Enquiring Judges in this case by the Hon''ble the Chief Justice alone is vitiated and contrary to Article 235 of the Constitution of India. Consequently, all the subsequent proceedings, commencing from the issue of the first official Memorandum dated 18.2.1991 becomes vitiated.

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 R.O.C. No. 77/90/Con.B.2, dated nil imposing 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.