

V. M. Tarkunde

Vs

Union of India and Others

Civil Miscellaneous Petitions Nos. 12670 and 12735 of 1981

(V.D. Tulzapurkar JJ)

06.06.1981

### JUDGMENT

1. In these interlocutory proceedings the question is what order this Court should pass regarding the prayer for maintenance of status quo in respect of the two learned Judges of the Delhi High Court (Justice Vohra and Justice Kumar) whose terms the Union of India has decided not to extend pending final disposal by this Court of the serious and vital issues raised by the petitioner in his transferred writ petition
2. It is true that this Court by its Order dated May 8, 1981, directed the Union of India to take a decision whether any of the concerned three Additional Judges should be reappointed for a further term as Additional Judges or they should be appointed as permanent Judges or otherwise and the expression 'or otherwise' in the order undoubtedly means that a decision not to extend their term and drop any of the them could be taken by the Union of India. This Court has now been informed that the decision to extend the term of Justice of the Delhi High Court and that a decision not to extend the terms of the other two Judges has been taken and hence there is no occasion to communicate that decision to anyone.
3. It was felt that when this Court was seized of a serious matter raising vital questions of interpretation of the relevant Articles of the Constitutions having a bearing on the independence of Judiciary, the Union of India could have been discreet not to have pre-empted the issues as it were by its aforesaid decision before this Court decided the issue finally. I therefore, made a suggestion to counsel for the respondents to ask the Government to reconsider its decision on the merits of the issues raised in the writ petition was reached by this Court. But it is unfortunate that the Union Government has not seen its way to accept or to respond to the Court's suggestion. Judicial decorum prevents me from making further comments.
4. A question regarding the powers of the Vacation Judge to give relief in these proceedings was raised and it was urged that the Vacation Judge's powers are circumscribed by the Rules of this Court, particularly. Order 7, Rule 4, read with Order 6, Rule 2. However at the same time this Courts inherent powers under Order 47, rule 6, to make such orders as may be necessary for the ends of justice has been preferred and would be available to a Vacation Judge sitting in the Vacation as the Court. After all, it must be remembered that I am not disposing of any matter finally but dealing with grant of interim reliefs at interlocutory stages and in my view, maintenance of status quo or any variation thereof a interlocutory stages as and when situation or occasion arises would be within the competence of the Vacation Judge and the only question is what would be the proper order that I should make at this stage after the Government's decision not to extend the term of the two learned Judges has been communicated to this Court.

5. It is well settled that exercise as well as non-exercise of a constitutional power for extraneous or non-germane considerations is mala fide and unconstitutional and this principle will apply to power contained in Article 224 (1) of the Constitution. In view of the following uncontroverted facts which have come on record, namely.

(a) the work in the Delhi High Court has not decreased but on the other hand the arrears in that High Court have been mounting ( a fact not disputed by the respondents);

(b) the Chief Justice of India and the Chief Justice of Delhi High Court had recommended the extension for these Judges for two years (an averment not controverted by the respondents) suggesting that there is nothing against their continuance as regards behaviour capacity or competence :

(c) the juniormost amongst the three concerned Judges has been given extension by one year :

it would appear clear that the petitioner could be said to have made out a prima facie case that the decision not to extend their terms is based on extraneous and non-germane considerations and therefore, mala fide and unconstitutional. In the absence of any material being furnished by the Union of India to the Court indicating how and why such decision was taken the inference that the decision was prima facie and unconstitutional receives strength. The question is what would be the proper interlocutory relief that could be granted in such situation.

6. The question whether the period specified in Article 224 (1) for which Additional Judge could be appointed gives fixity of tenure to the incumbent or whether the period merely furnishes a guarantee to the incumbent that he shall continue until the expiry of that period even if the volume of work in the High Court falls considerably and therefore, on proper construction of Article 224 there is a right in the Additional Judges to continue even after the period has expired when the mounting arrears still obtain is a ticklish and debatable question and requires further investigation and deeper consideration at the stage of final hearing by the Court. That being the position and since I wish to keep the issues alive I would pass the following order :

Notice to show cause why the status quo in respect of two Judges should not be maintained and continued during the pendency of the main petition, which will be heard on July 20, 1981 when the Court reopens after summer vacation."

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