

In The Matter Of Reference Under Article 317(1) of The Constitutional of India.

Special Reference No. 1 of 1983

(CJI Y. V. Chandrachud, Sabyasachi Mukharji, R. S. Pathak JJ)

17.08.1983

ORDER

CHANDRACHUD, C.J. –

1. This is the first Reference of its kind made by the President of India to his Court under Article 317(1) of the Constitution. That Article reads thus :

317. Removal and suspension of a Member of a Public Service commission. - (1) Subject to the provisions of clause (3) the Chairman or any other person of a Public Service Commission shall only be removed from his office by order of the President on the ground of misbehaviour after the Supreme Court, on reference being made to it by the President, has, on inquiry held in accordance with the procedure prescribed in that behalf under Article 145, reported that the Chairman or such other member, as the case may be, ought on any such ground to be removed.

Clause (3) of Article 317, which confers power on the President to remove the Chairman or any other member of a Public Service Commission for reasons mentioned in sub-clause (a), (b) and (c), is not relevant for our purpose.

2. Not only is this Reference the first of its kind but the facts which have been referred to us for our consideration and report are, shockingly, the first of their kind. We hope they will be the last of their kind. The order of Reference recites those facts as follows :

On November 24, 1982 at about 13.00 hours Shri Gopal Krishan Saini, Member, Punjab Public Service Commission, physically assaulted Smt. Santosh Chowdhary, Chairman, Punjab Public Service Commission inasmuch as he slapped her on the face in the presence of three other Members of the Punjab Public Service Commission, namely, Shri H. S. Deol, M. S. Brar and W. G. Lall and thereby committed gross misbehaviour.

In exercise of the power conferred by Article 317(1) of the Constitution, the President has referred for consideration of this Court the question "as to whether Shri Gopal Krishan Saini, Member of the Punjab Public Service Commission, ought, on the ground of mis-behaviour, to be removed from the office of the Member of the Commission".

3. We issued notice of the Reference to the five members of the Commission, including the Chairperson Smt. Santosh Chowdhary and Shri Gopal Krishna Saini who is alleged to have assaulted her. All of them have filed their affidavits in these proceedings. Certain other persons who claim to have knowledge of the incident or of its alleged background have also filed their affidavits. Amongst them are : Dr. Vinod Gupta, Ujagar Singh, Avtar Singh, Hakam Singh and Dr. Rasewat. An affidavit has also been filed by Shri Saini's wife, the purport of which is that Shri Saini has been

involved in this false incident since the Chief Minister of Punjab, Shri Darbara Singh, was not happy with his appointment as a Member of the Punjab Public Service Commission. It is also alleged that the Chair-person's husband was running classes for training students for the Public Service Commission Examinations, that he wanted certain students of his to be favoured in those examinations and that on the failure of Shri Saini to oblige him, his wife, the Chairperson, has involved Shri Saini into a false charge. The Chief Minister of Punjab has filed an affidavit denying the allegations made against him.

4. In pursuance of the notices issued by this Court, the Attorney-General of India and the Advocate-General of Punjab appeared in these proceedings.

5. Shri Nariman, who appears on behalf of Shri Saini whose conduct we are called upon to require into, contended that before making this Reference, the President should have obtained the opinion of a fact-finding body for his prima facie satisfaction that a case was made out for obtaining a report from this Court on the question of the alleged misbehaviour of Shri Saini. According to counsel, this Court cannot, through the medium of a Reference, be called upon to discharge functions which ordinarily fall within the jurisdiction of a trial court, civil or criminal. The danger of such a procedure is said to be that if we hold that the incident is proved, Shri Saini will automatically be held guilty by a criminal court of the charge of assault and he will have to suffer a decree for damages in a civil court. Counsel says that under Article 317(1), the limited function of this Court is or ought to be to determine whether the facts found upon by an independent fact-finding body show that the person concerned is guilty of misconduct and, secondly, whether the misconduct is of such a nature as to require his removal from the office of Member of the Public Service Commission.

6. We are unable to accept these submissions. The power of the President to make a reference to this Court under Article 317(1) is not subject to the condition precedent that he must first have the facts examined by some other body or authority. That Article provides that the Chairman or any other Member of a Public Service Commission can only be removed from his office on the ground of misbehaviour after the Supreme Court on a Reference made to it by the President reports that the Chairman or such other person ought to be removed on any such ground. There is no justification for reading into the Article a provision which is plainly not to be found in it, especially a provision in the nature of a condition precedent. Besides, the documents annexed to the Reference and indeed the facts that those documents are so annexed would show that the President was satisfied prima facie that the allegations made against the Member of the Public Service Commission require to be inquired into by us. Annexed to the order of Reference are a reply of Shri Saini to the allegations made against him and the statements of the three members of the Commission, Shri H. S. Deol, Shri M. S. Brar and Shri W. G. Lall. These four statements are Annexures II, III, III-A and III-B respectively to the Reference. It is on the basis of this material that the President has made the Reference. The material is of a kind and nature enough to justify the President's opinion that a prima facie case exists for an inquiry and report by this Court. In these circumstances, obtaining a preliminary opinion of yet another body would be needless duplication of work and avoidable waste of public time and money.

7. The argument that in a reference under Article 317(1) this Court ought not to embark upon an examination of facts and that its function is limited to determining whether the person concerned is guilty of misbehaviour and whether the misbehaviour is of such a nature as to justify his removal is in direct opposition to the plain words of Article 317(1). That article provides that, subject to the provisions of clause (3), (i) the Chairman or any other Member of a Public Service Commission can be removed from his office only by the order of the President on the ground of misbehaviour and

(ii) the order of removal can be passed after the Supreme Court has on inquiry reported to the President that the Chairman or the Member of a Public Service Commission is guilty of misbehaviour and ought to be removed from his office on that ground. The inquiry which this Court is required to hold is not into the limited question whether, on the basis of facts found by the President, the charge of misbehaviour is made out and whether the misbehaviour is of such a nature as to warrant the removal of the person from his office. The inquiry contemplated by the article is into the facts themselves and facts also, so as to enable this Court to pronounce upon the question whether the allegations made against the Chairman or Member are proved at all. The purpose of Article 317(1) is to ensure the independence of Members of the Public Service Commissions and to give them protection in the matter of their tenure. The Judges of the Supreme Court can be removed from their office only in accordance with the procedure prescribed by Article 124(4) which is made applicable to the judges of High Courts, the Comptroller and Auditor-General of India and the Chief Election Commissioner by Articles 218, 148 and 324(5) respectively. Members of Public Service Commissions are, in one sense, given a higher degree of protection by the elimination, as far as possible, of political pressures in the matter of their removal. Any allegation of misbehaviour made against them has to be examined by the Supreme Court on merits unlike the allegations made against those others whose removal on the ground of provided misbehaviour or incapacity depends upon the will of the Parliament. It is impossible to accept that the Supreme Court in one case and the Parliament in the case of those others are entrusted by the Constitution with the limited power of determining whether the facts found by some other body establish misbehaviour in one case and misbehaviour or incapacity in those other. Their function is to find upon facts and their duty is to pronounce whether the facts found by them establish the charge of misbehaviour or incapacity, as the case may be.

8. The apprehension expressed by the learned counsel that the finding recorded by this court will automatically decide the fate of a prosecution or of a civil suit for damages is real but, that is as it ought to be. No grievance can legitimately be made that an examination and assessment of facts is made by this Court instead of being made by a Magistrate or a Munsif. If a full opportunity is given to the parties to prove and rebut the facts in issue as in a regular trial, it is an idle complaint that the evidence has been examined and found upon by the Supreme Court and not by a court of first instance. If, after giving a full opportunity to both the sides, the Supreme Court comes to the conclusion that the facts alleged are establishment, the conviction or a decree for damages may follow as a matter of course. But then, a contrary finding by this Court will equally seal the fate of those proceedings. There is, therefore, no unfair advantages to either side if the question of fact are decided by this Court straightaway. If the essential safeguards of a fair adjudication are observed, no grievance can be made that the facts which establish the charge of misbehaviour are found by the highest Court of the land and not by the lowest.

9. The question which then arises before us is as regards the procedure which this Court should adopt in a Reference made by the President under Article 317(1) of the Constitution. That Article provides that an inquiry has to be held by this Court in accordance with the procedure prescribed in that behalf under Article 145. Article 145 provides, to the extent material, that subject to the provisions of any law made by Parliament, the Supreme Court may, from time to time, with the approval of the President, make rules for regulating the practice and procedure of the Court. Sub-clause (i) of Article 145(1) confers power on this Court to make rules for regulating inquiries under Article 317(1). Order XXXVIII of the Supreme Court Rules, 1966 contains rules regulating references under Article 317(1). Rule 1 of Order XXXVIII mentions the persons to whom notice of the reference is required to be given. Rule 2, which is in point, provides that "the Court may summon such witness as it considers necessary". This rule shows that while making an inquiry into

the matter referred to it by the President, this Court is entitled to summon witnesses, which obviously is for the purpose of recording their evidence. In other words, while dealing with a reference under Article 317(1), this Court has the power to summon witness and record their evidence.

10. A procedural issue which was debated before us is whether we should pronounce our opinion on the allegations made against Shri Saini on the basis of the affidavits only or whether we should permit the parties to cross-examine persons who have filed their affidavits. Considering the nature and gravity of the matter referred to us, we are of the opinion that it will not be conducive to justice to decide the Reference on a consideration of the affidavits only. We do not know at this stage whether the allegation made by Shri Saini that he has been falsely involved into the particular incident by reason of certain other matters and at the instance of certain other persons, is true or not. But those allegations cannot be adjudicated upon on a consideration of the affidavits only. The credibility of witness who depose to facts is a matter which bears directly on the adjudication of those facts. And the best method of testing whether a witness is a person of credit is to subject him (or her) to cross-examination. The credit of a witness can be shaken (and, ironically, sometimes established) by cross-examining him and indeed, Section 146(3) of the Evidence Act specifically permits the cross-examination of a witness in order "to shake his credit by injuring his character". Bearing in mind the impact of four findings on a future trial, civil or criminal, relating to the question referred to us, the repercussions of our findings on the parties concerned and the fact that the matter referred to us is one of public importance which transcends the immediate private interests of the parties who have made allegations and counter-allegations against one another, we are of the view that parties whose interests are directly affected by these proceedings, that is to say the Chairperson Smt. Santosh Chowdhary and Sri Gopal Krishan Saini ought to be permitted to cross-examine opposing witnesses who have filed their affidavits.

11. There was a sharp difference between the rival views submitted before us as to the nature and scope of the evidence which we should allow the parties to lead. It was contended by Shri Sorabjee who appears for the Government of Punjab and by Shri G. L. Sanghi who appears for the Chairperson that evidence should be allowed to be led only on the question whether the incident slapping took place as alleged and not on any other matter. It was urged by these learned counsel that we are only concerned to determine whether Shri Saini slapped the Chairperson and not with the events antecedent to the assault or which are said to furnish the motive for the alleged false implication of Shri Saini. On the other hand, it was contended by Shri Nariman that the case of his client is that he has been falsely implicated into the charge of assault because he had incurred the wrath of the Chief Minister of Punjab and the hostility of the Chairperson's husband and that, it would be impossible for him to prove his case unless he is allowed to cross-examine witness on those aspects of the matter. Counsel contends that if he could satisfy us that there was a conspiracy to involve his client falsely or that there were reasons for so involving him, we will be loathe to hold that the alleged incident is proved. Shri Nariman's submission must be accepted in the circumstances of the case. It will be impossible to consider in isolation the evidence bearing directly on the incident which is alleged to have taken place on November 22, 1982. The entire evidence, admissible and relevant, shall have to be taken into account for the purpose of deciding whether the allegation against Shri Saini can be held to be proved. We are not pronouncing at this stage upon the admissibility or relevance of any particular piece of evidence, which shall have to be done after the entire evidence is before us. All that we do now is to say that we cannot prevent Shri Saini, against whom a grave charge has been made, from proving that the charge is false and motivated. One of the questions which is bound to arise in this matter, as it arises in matters of similar nature, is as to why the complainant should make a false allegation that she was slapped,

courting trouble and involving her own status and respectability. The answer to that question has to be furnished by the person who is called upon to meet the allegation that he slapped her. Answers on questions of fact cannot be made in courts of law in a vacuum. There has to be evidence to justify those answers. Therefore, it is only fair that an opportunity should be given to Shri Saini to prove his case that the charge against him is false, inspired and motivated. We only hope that this opportunity will not be exploited by Shri Saini to fight a political battle against the Chief Minister or to engage in a duel with the Chairperson's husband. In the ultimate analysis, after the dust raised by these accusations and counter-accusations has settled down, the fundamental question which this Court will have to answer is : Did Shri Saini slap the Chairperson or not ? She says he did. He says he did not. And on the contrary, according to him, it is she who raised her hand to beat him when he tried to ward off the blow. He says that this occasion was exploited by interested parties to involve him in a false charge, out of personal malice and hostility. Both the accuser and the accused must have an equal opportunity to prove their respective cases. It must also be remembered that Article 317 was enacted in order to give protection to the members of the Public Service Commissions in regard to their removal from office and not as a disability.

12. Having seen that witnesses shall have to be summoned and allowed to be cross-examined by the opposite party, the next question which we have to decide is whether we should have the evidence in our presence or whether we can and should appoint some responsible delegate for doing so. Order XXXVIII, Rule 2 of the Supreme Court Rules, 1966 provides that this Court may summon such witnesses as it considered necessary. This provision confers the requisite power on this Court to summon and examine witness, but nothing contained therein can be read to mean that after deciding which witnesses should be summoned and examined, evidence must be recorded by this Court itself. Order XLVII, Rule 6 of the same Rules Provides that nothing contained in the Rules "shall be deemed to limit or otherwise affect the inherent powers of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court". This provision, like its counterpart in statutes like the Code of Civil Procedure (Section 151) or the Code of Criminal Procedure (Section 482), does not create or confer any new power but preserves the power of the Court to act *ex debito justitiae*. Through a provision like Rule 6 of Order XLVII of the Supreme Court Rules is not specifically incorporated in Order XXXVIII of those Rules, it shall have to be read in the latter Order in order to enable this Court to pass proper orders in the interest of justice. Considering the overwhelming commitments of this Court for the time being (and in the foreseeable future), it is regretfully inexpedient that the evidence should be recorded by this Court himself. No useful purpose will be served by expanding our own time in recording the evidence of various witness except for the advantage of seeing and hearing the witnesses. The balance of convenience requires that we should forgo that advantage and delegate the duty of recording evidence. Accordingly, we direct that evidence in this Reference will be recorded by a learned Additional District and Sessions Judge, Delhi, who will be nominated by the learned District and Sessions Judge, Delhi. The nomination may be made before August 22, 1983.

13. We cannot confer any power on the learned Judge so nominated for recording evidence, to decide on the admissibility or relevance of any particular piece of evidence. The learned Judge will, therefore, record the evidence which the parties lead before him, within the constraints of the following guidelines :

- (1) The affidavits filed in the Court will be treat as the examination-in-chief of the respective witnesses.
- (2) The evidence to be recorded by the learned Judge will be limited to the cross-

examination of witnesses who have filed affidavits before us. In other words, no person who has not filed an affidavit in this Court will be examined or cross-examined as a witness, except with the leave of this Court.

(3) Witnesses who have filed affidavits in this Court may be summoned or requested by the learned Judge to attend his Court for the purpose of cross-examination. The proceedings will normally be held in Delhi. Evidence may, however, be recorded at any other place if the learned Judge considers it necessary or convenient.

14. The mere fact that the evidence of any particular witness is recorded by the learned Judge will not conclude the issue as regards the admissibility or relevance of that evidence. All questions regarding admissibility and relevance of the evidence so recorded will be decided by this Court during the hearing of the Reference.

15. We hope that all parties concerned will take care to avoid putting frivolous or scandalous questions to witness and will afford the necessary cooperation to the learned Judge for an expeditious termination of the proceedings before him.

16. The parties shall appear before the learned Additional District and Session Judge nominated by the learned District and Sessions Judge, Delhi, on Monday, September 5, 1983, at 11 a.m., for obtaining further directions in the matter. The recording of evidence will commence on Monday, September 12, 1982 and shall proceed from day to day until the entire evidence is over. We expect that the recording of evidence will be over by September 30, 1983. In case it is not over by that date, the learned Judge may write to the Registrar of the Supreme Court for extension of time. The evidence will be terminated to the Registrar (Judicial) of this Court immediately after the entire evidence is recorded.

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