

Anand Kumar

Vs

Kattail Bhaskaran and Others

Special Leave Petitions (Civil) Nos. 12-12-A of 1988

(A.P. Sen, E.S. Venkataramiah, L.M. Sharma JJ)

19.01.1988

ORDER

1. In response to the queries made by this Court by its order dated January 8, 1988 Kuldeep Singh, learned Additional Solicitor General has furnished the relevant information as under :

(1) In the matter of the age of Shri Justice K. Bhaskaran, Chief Justice of the Andhra Pradesh High Court, the advice and comments of the Chief Justice of India were sought in terms of Article 217(3) of the Constitution of India. The files containing all the relevant papers were referred to the Chief Justice of India on September 28, 1987.

(2) The Chief Justice of India on December 29, 1987 desired to have an opinion as to the effect of the judgment pronounced by the Andhra Pradesh High Court concerning the matter of the age of the Chief Justice Bhaskaran. The opinion was made available to the Chief Justice of India on January 6, 1988. The Chief of India on January 11, 1988 indicated further course of action in the matter. The file has been re-submitted to the Chief Justice of India on January 16, 1988 for his further advice.

(3) A view in the matter will be taken by the President of India after the advice of the Chief Justice of India is made available.

2. In view of the foregoing, it is clear that the President of India in compliance with Article 217(3) of the Constitution of India has referred the question as to the age of Shri K. Bhaskaran, the Chief Justice of the Andhra Pradesh High Court to the Chief Justice of India for his opinion. That being so, no writ of mandamus can lie. The President of India as a constitutional functionary has discharged his duties under Article 217(3) of the Constitution and the decision must rest on the advice of the Chief Justice of India and not the Council of Ministers. As laid down in the Union of India v. Jyoti Prakash Mitter [(1971) 3 SCR 483, 503 and 504 : (1971) 1 SCC 396, 409-10 : (1971) 1 LLJ 256], the matter as to the age of the Chief Justice or a sitting judge of a High Court is a judicial function of the President of India, which has to be discharged in accordance with the special provisions made under Article 217(3) of the Constitution. Such a question as to the age of the Chief Justice or a judge under Article 217(3) of the Constitution is beyond the reach of the Council of Ministers under Article 74 of the Constitution.

3. J. C. Shah, C.J., speaking for the Constitution Bench has laid down the law in these words : (SCC p. 410, para 32)

It is necessary to observe that the President in whose name all executive functions of the Union are performed is by Article 217(3) invested with judicial power of great significance which has bearing on the independence of the judges of the higher courts. The President is by Article 74 of the Constitution the constitutional head who acts on the advice of the Council of Ministers.....

4. The question as to the age of Shri K. Bhaskaran, the Chief Justice of the Andhra Pradesh High Court must, therefore, be decided by the President of India on the advice of the Chief Justice of India as enjoined by Article 217(3) of the Constitution in the Light of the principles laid down by this Court in Jyoti Prakash Mitter case [(1971) 3 SCR 483, 503 and 504 : (1971) 1 SCC 396, 409-10 : (1971) 1 LLJ 256].

5. The High Court, in our considered opinion, should have thrown out the petition under Article 226 of the Constitution at the very threshold because the President of India was seized with the question under Article 217(3) of the Constitution. Indeed, it appears from the judgment of the High Court that when the learned counsel for the Union of India informed the court that the President of India is seized with the question, the counsel for the appellant conceded that the writ of quo warranto is not maintainable.

6. The special leave petitions are accordingly dismissed.

</html