

Shri Krishnaswami

Vs

Union of India and Others

Writ Petitioner (Civil) No. 149 of 1992

(A. M. Ahmadi, K. Jayachandra Reddy, G. N. Ray JJ)

27.02.1992

ORDER

1. During the course of the hearing of this petition Mr. Kapil Sibal urged the following contentions for our consideration :

(1) Sub-section (1) of Section 3 of the Judges (Inquiry) Act, 1968 mandates that the Speaker of the House of the People shall either admit or refuse to admit a motion for presenting an address to the President of India for the removal of a Judge of the Supreme Court of India only 'after' considering such materials, if any, as may be available to him and failure to comply with the said since-qua-non, viz., consideration of available material before admitting the motion, vitiates his decision for non-application of mind. In the present case since the then Speaker, respondent 3, is not shown to have applied his mind to the available material before admitting the motion, his decision to admit the motion and constitute the Committee comprising respondents 4, 5 and 6 is unsustainable in law.

(2) Sub-section (2) of Section 3 of the Judges (Inquiry) Act, 1968 invests the Speaker with the power to constitute a Committee for the purpose of making an investigation into the grounds on which the removal of the Judge is sought but such power must be exercised consistently with the established practice and norm and consistently with the ideal of independence of the judiciary, after consulting the Chief Justice of India. In the present case all the three Committee members were directly approached by the Speaker, respondent 3, who thereby departed from the well-established practice and hence the constitution of the Committee is clearly vitiated in law.

(3) Although sub-section (1) of Section 4 of the Judges (Inquiry) Act empowers the Committee to regulate its own procedure in making the investigation, which procedure must be consistent with the rules of natural justice, the Committee has not out lined any procedure for investigation and the procedure it was hitherto followed in framing charges without undertaking any preliminary investigation to ascertain if there is sufficient prima facie material for farming a charge and in refusing to provide the concerned Judge with copies of documents sought on unsustainable grounds and in permitting third parties to assist the Committee through its counsel against the Judge and in not permitting the petitioner to assist the Committee to establish the innocence of the Judge, the Committee has completely mutilated the 'sui juris' character of the investigation and there by rendered the proceedings illegal and wholly inconsistent with the principles of natural justice,

(4) If the provisions of sub-section (3) and (4) of Section 3 are read to mean that they empower the Committee to frame charges without holding preliminary investigation at which the concerned Judge may participate the said two sub-section would be rendered ultra vires Article 124 (5) of the Constitution.

(5) When the Constitution Bench decided the case (Sub-Committee on Judicial Accountability v. Union of India ((1991) 4 SCC 699)) the proceedings which took place in the House of the People were not before it, which proceedings, now available, clearly indicate that the Speaker himself was alive to the fact that he was constitutionally obligated to place the notice before the House and his decision on the admission of the notice was to depend on the collective wisdom of the House. In view of this factual aspect reflected in the proceedings of the House, the decision of the Constitution Bench needs reconsideration.

2. Having heard Mr. Sibal we direct notice to issue to respondents 1, 3 and 7. We also direct notice to issue to the learned Attorney General. All the notices will be returnable on March 10, 1992. In addition to usual mode of service we permit Dasti Service. The notices will set out the contentions to enable the concerned respondents to respond, if they so desire. No stay.

3. Having regard to the importance of the questions raised in the petition, we direct the Registry to place the papers before the learned Chief Justice of India for constituting a Constitution Bench to hear this petition.

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