

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO.218 OF 2011

Justice P.D. Dinakaran

... Petitioner

Versus

Judges Inquiry Committee and another

... Respondents

J U D G M E N T

G.S. Singhvi, J.

1. This petition is directed against order dated 24.4.2011 passed by the Committee constituted by the Chairman of the Council of States (Rajya Sabha) (for short, 'the Chairman') under Section 3(2) of the Judges (Inquiry) Act, 1968 (for short, "the Act") rejecting the petitioner's prayer for supply of the details and documents enumerated in paragraph 4(a) to (m) of application dated 19.4.2011 and objections raised by him to the jurisdiction of the Committee to frame certain charges.

2. Fifty members of the Rajya Sabha submitted a notice of motion for presenting an address to the President of India for removal of the petitioner, who was then posted as Chief Justice of the Karnataka High Court, under Article 217 read with Article 124(4) of the Constitution of India. The acts of misbehaviour allegedly committed by the petitioner were enumerated in the notice, which was accompanied by an explanatory note and documents in support of the allegations. For the sake of convenient reference, the allegations contained in the notice of motion are reproduced below:

- I. Possessing wealth disproportionate to known sources of income.
- II. Unlawfully securing five Housing Board plots, in favour of his wife, and two daughters.
- III. Entering into Benami transactions prohibited and punishable under the Benami Transactions (Prohibition) Act, 1988.
- IV. Acquiring and possessing agricultural holdings beyond ceiling limit under the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961.
- V. Illegal encroachment on Government and public property to deprive dalits and the poor of their right to livelihood.
- VI. Violation of the human rights of dalits and the poor.
- VII. Destruction of evidence during official enquiry.
- VIII. Obstructing public servant on duty.

- IX. Repeated undervaluation of properties at the time of registration of sale to evade stamp duty.
- X. Carrying out illegal construction in breach of Town Planning Law and planning permit.
- XI. Misuse of official position to unlawfully secure property and to facilitate other illegal acts for personal gain.
- XII. Abuse of judicial office:
 - A. To pass dishonest judicial orders:
 - a) Contrary to settled principles of law to favour a few individuals or for his own unjust enrichment, at the cost of the public exchequer and the country's natural resources.
 - b) In matters where he had personal and direct pecuniary interest to secure several properties for his family.
 - B. To take irregular and dishonest administrative actions:
 - a) for constituting Benches and fixing Rosters of judges to facilitate dishonest judicial decisions.
 - b) to make arbitrary and illegal appointments and transfers.”

The explanatory note appended to the notice of motion contained detailed facts which, in the opinion of the signatories of the motion, supported the acts of misbehaviour alleged against the petitioner.

3. After the motion was admitted, the Chairman constituted a Committee comprising Mr. Justice V.S. Sirpurkar, Judge, Supreme Court of India, Mr. Justice A.R. Dave, the then Chief Justice of Andhra Pradesh High Court and Shri P.P. Rao, Senior Advocate.

4. Before the Committee could commence its proceedings, Mr. Justice A.R. Dave was elevated to this Court and, in his place, Mr. Justice J.S. Khehar, the then Chief Justice of Uttarakhand High Court was appointed as member of the Committee. In September, 2010, Mr. Justice Aftab Alam, Judge, Supreme Court of India was appointed as Presiding Officer because Mr. Justice V.S. Sirpurkar recused from the Committee.

5. After preliminary scrutiny of the material placed before it which included documents summoned from Government departments and agencies/instrumentalities of the State and statements of some persons recorded in the context of the allegation made against the petitioner, the Committee issued notice dated 16.3.2011 requiring him to appear on 9.4.2011 to answer the charges. The notice was accompanied by a statement of charges and lists of documents and witnesses. Each of the 14 charges enumerated in the notice was supported by specific grounds with minute details and documents.

6. Immediately after receiving notice, the petitioner submitted application dated 7.4.2011 to the Chairman with the prayer that a direction may be issued for supply of 10 documents specified therein. By another application of the same date, the petitioner sought audience of the Chairman. On the next date, i.e., 8.4.2011, he made a representation to the Chairman with the prayer that order admitting notice of motion may be withdrawn, order constituting the Inquiry Committee may be rescinded and notice issued by the Committee may be annulled. Simultaneously, he raised an objection to the appointment of Shri P.P. Rao as member of the Committee by alleging that he was biased. On 9.4.2011, the petitioner sent a letter to the Presiding Officer of the Committee enclosing therewith a copy of representation dated 8.4.2011 made to the Chairman and requested that further proceedings may be deferred till the same was decided. The petitioner's request was turned down by the Presiding Officer of the Committee vide order dated 9.4.2011 and he was asked to file written statement of defence latest by 20.4.2011. After 10 days, the petitioner submitted two applications dated 19.4.2011 to the Committee. In the first application, he made a request for supply of copies of about three dozen documents. By the second application, the petitioner raised several objections against the notice. One of his objections was that the charges framed by the Committee are beyond the scope of the

notice of motion presented before the Rajya Sabha and that while framing the charges, the Committee had taken into consideration the material which did not form part of the notice of motion. Another objection taken by the petitioner was that even before issuing notice under Section 3(4), the Committee had, with the assistance of the advocate appointed under Section 3(9), made investigation into the charges and this was legally impermissible. The petitioner also objected to the participation of Shri P.P. Rao in the proceedings of the Committee on the ground of bias.

7. The applications made by the petitioner to the Committee were disposed of by two separate orders dated 24.4.2011. By one order, the Committee virtually rejected the petitioner's request for supply of the documents specified in paragraph 4 of the first application. The Committee observed that documents mentioned at paragraph 4 (g.1), (g.2), (g.3), (g.6), (g.16) and paragraph 4(j) and 4(k) are not available with it and the material on which the charges were based had already been supplied to the petitioner. The relevant portions of the order passed in relation to the petitioner's demand for supply of documents are reproduced below:

“It may be stated at the outset that the documents/materials at paragraph 4(g.1), (g.2), (g.3), (g.6), (g. 16) and paragraph 4 (j) and 4(k) are not available with this Committee.

None of the documents/materials/information in the long list drawn up so laboriously is of any relevance to the enquiry being conducted by this Committee or would serve any purpose in the preparation/submission of the written statement of defence to the charges served upon the judge. In case of some of the items in the list the request to supply copies is plainly frivolous. All the materials on which the charges are based are, as noted above, comprehensively served upon the applicant along with the list of witnesses.

Now, taking up each of the items in the list one by one the Committee is of the considered view that the documents/materials enumerated at sub-paragraphs (a) and (b) of paragraph 4 have no relevance to the present enquiry: Further, from the materials on record the Committee has reasons to believe that the Judge is already in possession of a copy of the notice of motion. Nevertheless, just to satisfy the request, the judge may be given copies of the notice of motion and the documents/evidence submitted in its support.

The document at sub-paragraph (c) is a public document and there may be no objection to giving it to the Judge.

The document at sub-paragraph (d) has no relevance to the inquiry before the Committee and the request for its supply is disallowed.

As to the item at sub-paragraph (e), the Inquiry Committee has not framed any formal Rules.

The procedure proposed to be adopted by the Committee would be fully explained at the first sitting of the hearing, in case there is the need to hold further hearings.

The documents at sub-paragraph (g) (1), (2), (3), (11), (12), (14) are inter-departmental letters of which no copy can be given to the Judge. The rest of the materials at sub-paragraph (g) (4), (5), (6), (7), (8), (9), (10), (13), (15), (16), (17), (18), (19), (20), (21), (22), (23), (24), (25) and (26), have no

relevance to the filing of the written statement and hence, the prayer for furnishing copies of those documents is disallowed.

Regarding sub-paragraph (h), if any additional document/ material/ information or an additional witness is proposed to be used/ examined in support of the charges, the list of additional documents/witnesses would be supplied to the applicant in due course.

The information sought in sub-paragraphs (i), (j), (k), (l) and (m) are *prima facie* frivolous and are rejected.

Having said all this, the Committee would like to add that it has got nothing to hide and whatever documents/materials are available with it are open to inspection. The applicant may inspect or cause inspection of the documents available with the Committee during working hours on any day.”

By the second order, the Committee rejected the preliminary objections raised by the petitioner to its jurisdiction and the procedure adopted by it for framing the charges. The relevant portions of the second order are extracted below:

“In case the ground on which the removal of the judge is sought is not incapacitation but misbehaviour it would be incumbent upon the committee, before framing the definite charges against the judge, to examine all instances of misbehaviour, apart from their nature and magnitude. Further in case while examining a certain instance of misbehaviour the Committee comes across materials indicating other instances of misbehaviour it would be obligatory for the Committee to thoroughly follow those leads to the other instances and to bring the full facts to light.

The procedure under Section 3 of the Judges (Inquiry) Act, 1968 envisages the commencement of proceedings with the notice of motion sent by either the Speaker of the House of

the People or the Chairman of the Council of States followed by investigation at the instance of the Committee. Next step in the sequence of procedure is the framing of definite charges on the basis of which the investigation is proposed to be held. Framing of definite charges is thus the foundation for the process of participatory investigation. Sub-section (3) does not contemplate that the framing of charges must necessarily be based only on the notice of motion and the material sent therewith. In order to enable the Committee to frame definite charges, it would be within its powers to have preliminary investigations made and then if need be, frame definite charges which would then form the basis of the participatory investigation.

The procedure as indicated above would also be fair to the Judge as any spurious or unsubstantiated material would get screened off in the process. It is following the above process that in the instant case, the Committee deemed it fit not to include at least two of the charges though they were so mentioned in the notice of motion. For the same reasons it could also include some of the additional charges as the preliminary enquiry indicated. The power to conduct investigation includes all incidental and consequential powers to sub-serve that power.

If the argument made on behalf the applicant is accepted it would take the soul out of the provisions of section 3 of the Act and render the investigation by the Committee completely ineffectual. The job of the Committee is not to simply paraphrase the grounds in the notice of motion and to re-hash the materials submitted before the House of the People or the Council of States, as the case may be. A Committee consisting of a sitting judge of the Supreme Court, a Chief Justice of the High Court and a distinguished jurist is not a committee of draftsmen.

The second objection that the misbehaviour of a Judge in order to constitute a basis for his removal must relate to the conduct of the Judge in the discharge of his duties is equally without substance. It amounts to saying that it does not matter if

beyond the Court hours a Judge is a thief in his personal life. The submission is fit only to be taken note of and be rejected.

The third objection relates to the Committee's proceeding on April 9, 2011, when the petition submitted by the applicant asking for time was put up before Mr. Justice Aftab Alam who rejected it by the order passed on that date. According to the applicant, the order of that date is *non est* because in the absence of the other two members there was no quorum for the Committee's sitting. In this regard it needs to be noted that the previous sitting of the Committee was held on April 2, 2011 and on that date the Committee had made the following resolution:

“On the basis of the authorization made by Mr. Justice J.S. Khehar and Mr. P.P. Rao, the Committee resolved that on April 9, 2011, the date on which Mr. Justice P.D. Dinakaran is directed to appear and submit his response to the charges, the Presiding Officer of the Committee, Mr. Justice Aftab Alam, may fix the dates for further proceedings of the Committee.”

The reason for the resolution was that the frequent visits to Delhi, apart from personally taxing to Justice Khehar tended to affect his work as the Chief Justice of the High Court. Mr. P.P. Rao, similarly, had some other unavoidable commitment. It was, therefore, felt that the applicant might submit his written statement of defence in the presence of the Presiding Officer alone who would fix the dates for further proceedings of the Committee.

It is true that the petition filed on behalf of Mr. Justice P.D. Dinakaran on April 9, 2011, was put up before the Presiding Officer of the Committee while he was sitting singly and he passed an order on that petition in the presence of the counsel for the applicant. Nevertheless, the draft order was sent, both to Justice Khehar and Mr. P.P. Rao and it was formalized as the order of the Committee, only after incorporating the suggestions made by the other two members and when it was finally approved by all the three members. Consequently, the

copy of the order was given to the counsel for the applicant only on April 11, 2011.”

The Committee also held that the plea of bias raised against Shri P.P. Rao was an afterthought and was untenable. We are not advertent to the reasons recorded by the Committee for arriving at this conclusion because the petitioner had challenged the appointment of Shri P.P. Rao as member of the Committee in a separate petition being Writ Petition (Civil) No. 217 of 2011, which has since been disposed of.

8. Shri Basava Prabhu S. Patil, learned senior counsel appearing for the petitioner placed before the Court a chart to show that the charges framed by the Committee under Section 3(3) were not in consonance with the allegations contained in the notice of motion presented by 50 members of the Rajya Sabha and argued that charges No.3, 5, 13 and 14, which are not based on the allegations contained in the notice of motion are liable to be quashed as without jurisdiction. Shri Patil emphasised that the Committee's power to frame charges and make investigation is limited to the allegations on which the notice of motion is based and it does not have the jurisdiction to frame charges on other allegations. Learned senior counsel also faulted the procedure adopted by the Committee by pointing out that the investigation contemplated under Section 3(2) commences with the framing

of definite charges under Section 3(3) which are required to be communicated to the concerned Judge under Section 3(4) and the power vested in the Committee under Section 5 can be exercised only for the purpose of making investigation under the Act but, in the present case, the Committee started investigation even before framing the charges, collected large number of documents and recorded statements of some persons with the assistance of the advocate appointed under Section 3(9). Shri Patil then argued that by making investigation prior to the framing of charges, the Committee has acted in violation of the scheme of the Act and the petitioner has a bona fide apprehension that the investigation to be made hereinafter will be an empty formality. Shri Patil relied upon the judgments of this Court in **Sub-Committee on Judicial Accountability v. Union of India** (1991) 4 SCC 699, **Sarojini Ramaswami v. Union of India** (1992) 4 SCC 506 and **Krishna Swami v. Union of India and others** (1992) 4 SCC 605 as also the judgments of the Kerala, Bombay and Allahabad High Courts in **V. Padmanabha Ravi Varma Raja v. Deputy Tahsildar, Chittur** AIR 1963 Kerala 155, **Mahendra Bhawanji Thakar v. S.P. Pande**, AIR 1964 Bombay 170 and **Prem Prakash Gupta v. Union of India** AIR 1977 Allahabad 482 and argued that the minority view expressed by K. Ramaswamy, J. in **Krishna Swami's** case on the interpretation of Sections 3 and 4 of the Act should be treated as law declared under Article 141 of the

Constitution because the majority did not express any view on the questions framed by the three-Judge Bench. Learned senior counsel further argued that in the absence of any contrary view by the majority, the minority opinion is binding on all including this Court unless the same is overruled by a larger Bench. Shri Patil finally argued that violation of the mandate of Section 3 has the effect of vitiating the proceedings of the Committee and, therefore, the charges framed against the petitioner are liable to be quashed.

9. During the course of arguments in rejoinder, Shri Patil produced copy of order dated 11.5.2010 issued by the Central Government appointing Shri U.U. Lalit, Senior Advocate of this Court to assist the Committee and argued that the same should be treated as nullity being *ultra vires* the provisions of Section 3(9) which postulates appointment of an advocate by the Central Government to conduct the case against the Judge only when it is required to do so by the Speaker or the Chairman. Learned senior counsel submitted that by getting an advocate appointed for its assistance, the Committee has assumed the role of an adversary and it can no longer be treated as an impartial body entrusted with the task of making investigation into the grounds on which the petitioner's removal has been sought from the office of the Chief Justice.

10. Shri U.U. Lalit, learned senior counsel appearing for the Committee relied upon paragraph 69 of the judgment of the majority of the Constitution Bench in **Sarojini Ramaswami's** case and argued that the Court cannot quash the charges at an intermediary stage and it will be open to the petitioner to challenge the same in case the report of the Committee is adverse to him and on a motion being passed by Parliament, he is removed from the office. Shri Lalit then referred to Articles 121 and 124(4) and (5), the judgments in **Sub-Committee on Judicial Accountability's** case, **Krishna Swami's** case and argued that for the purpose of framing charges under Section 3(3), the Committee is entitled to scrutinise the allegations contained in the notice of motion and the supporting material and also make preliminary inquiry to *prima facie* satisfy itself that the particular allegations need further investigation. Learned senior counsel emphasised that investigation into the allegations of misbehaviour levelled against a Judge of the High Court or the Supreme Court is a serious matter and before framing definite charges under Section 3(3), the Committee is duty bound to carefully scrutinise the allegations contained in the notice of motion along with other material and then decide whether there exists sufficient ground for framing the charges. Shri Lalit submitted that the investigation envisaged under Section 3(3) is participatory investigation and it has nothing to do with the preliminary inquiry, which can be made by the Committee for

satisfying itself whether the particular allegation made against the Judge constitutes an act of misbehaviour and warrants framing of charge. Learned senior counsel further submitted that the Committee is not obliged to frame charges with reference to each and every allegation contained in the notice of motion and if after making preliminary inquiry, the Committee feels satisfied that the particular allegation cannot be termed as an act of misbehaviour, then it has the discretion to not frame charge with reference to such allegation. Learned senior counsel emphasised that in this case, the Committee has framed charges after objectively considering the allegations contained in the notice of motion together with the explanatory note and the material made available or received by it from various sources as also the statements of some persons recorded in the course of preliminary inquiry and the allegation of bias levelled by the petitioner is wholly unfounded. He submitted that impartiality of the Committee is evinced from the fact that even though, the notice of motion contained allegations that the petitioner had passed judicial orders for extraneous reasons, manipulated constitution of the Benches and made arbitrary appointments and transfers of the staff of the High Court, charges have not been framed on these allegations. Shri Lalit submitted that all the charges framed against the petitioner except charge No.14 have direct nexus with the allegations contained in the notice of motion and the explanatory note appended thereto. Learned senior

counsel argued that even though charge No.14 is not exactly relatable to what has been stated in the notice of motion, inasmuch as the allegation contained under the heading “disproportionate pecuniary resources” speaks of celebration of the marriage of the petitioner’s daughter at Bangalore with extreme opulence, the charge relates to non-payment of bills of the rooms booked at Madras Race Club and the electricity and illumination expenses, this minor deviation should not be made a ground for recording a conclusion that the Committee has acted beyond its jurisdiction. Shri Lalit controverted the argument of Shri Patil that the view expressed in the minority opinion of Justice K. Ramaswamy in **Krishna Swamy’s** case should be treated as the law laid down by this Court under Article 141 of the Constitution by pointing out that the majority had specifically disagreed with K. Ramaswamy, J.

11. Shri P.P. Malhotra, learned Additional Solicitor General referred to the preamble and Section 3 of the Act and argued that the Committee can certainly make a preliminary inquiry and even record statements of persons in connection with the allegations for the purpose of *prima facie* satisfying itself about the necessity of making further investigation. Shri Malhotra relied upon the judgment of this Court in **H.N. Rishbud v. State of Delhi** (1955) 1 SCR 1150: AIR 1955 SC 196 and argued that the provisions

contained in the Act do not impose any embargo on the making of preliminary inquiry by the Committee as a prelude to the framing of charges under Section 3(3).

12. Shri Prashant Bhushan, learned counsel for the intervenor submitted that the Committee constituted under Section 3(2) is vested with the power to devise its own procedure for the purpose of making investigation and no exception can be taken if a preliminary inquiry is made for the purpose of framing definite charges against the Judge. Shri Bhushan further submitted that in the absence of statutory bar, the Committee can seek assistance of an advocate and the Central Government did not commit any illegality by appointing Shri U.U. Lalit, Senior Advocate to assist the Committee. Learned counsel invited the Court's attention to the report of the Inquiry Committee headed by Mr. Justice P.B. Sawant, which had inquired into the allegations of misbehaviour levelled against Justice V. Ramaswami to show that the Committee had taken the assistance of S/Shri F.S. Nariman and Rajender Singh, Senior Advocates and Shri Raju Ramachandran, Advocate.

13. We have considered the respective arguments. The questions which need determination by the Court are:

- (1) Whether the Committee constituted under Section 3(2) is entitled to make preliminary inquiry for the purpose of framing charges under Section 3(3).
- (2) Whether the Committee can seek assistance of an advocate for the purpose of framing the charges.
- (3) Whether the charges framed against the petitioner are *ultra vires* the allegations contained in the notice of motion presented by 50 members of the Rajya Sabha.

For deciding question Nos. 1 and 2 which are interlinked, it will be useful to notice the provisions of Articles 121, 124(4) and (5) and 217(1) of the Constitution as also the provisions of the Act and the Judges (Inquiry) Rules, 1969 (for short, “the Rules”), which are as under:

“121. Restriction on discussion in Parliament—No discussion shall take place in Parliament with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties except upon a motion for presenting an address to the President praying for the removal of the Judge as hereinafter provided.

124. Establishment and Constitution of Supreme Court—(4) A Judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President in the same session

considering such materials, if any, as may be available to him either admit the motion or refuse to admit the same.

(2) If the motion referred to in sub-section (1) is admitted, the Speaker or, as the case may be, the Chairman shall keep the motion pending and constitute as soon as may be for the purpose of making an investigation into the grounds on which the removal of a Judge is prayed for, a Committee consisting of three members of whom—

(a) one shall be chosen from among the Chief Justice and other Judges of the Supreme Court;

(b) one shall be chosen from among the Chief Justices of the High Courts; and

(c) one shall be a person who is in the opinion of the Speaker or, as the case may be, the Chairman, a distinguished jurist:

Provided that where notices of a motion referred to in sub-section (1) are given on the same day in both Houses of Parliament, no Committee shall be constituted unless the motion has been admitted in both Houses and where such motion has been admitted in both Houses, the Committee shall be constituted jointly by the Speaker and the Chairman:

Provided further that where notices of a motion as aforesaid are given in the Houses of Parliament on different dates, the notice which is given later shall stand rejected.

(3) The Committee shall frame definite charges against the Judge on the basis of which the investigation is proposed to be held.

(4) Such charges together with a statement of the grounds on which each such charge is based shall be communicated to the Judge and he shall be given a reasonable opportunity of presenting a written statement of defence within such time as may be specified in this behalf by the Committee.

(8) The committee may, after considering the written statement of the Judge and the medical report, if any, amend the charges framed under sub-section (3) and in such a case, the Judge shall be given a reasonable opportunity of presenting a fresh written statement of defence.

(9) The Central Government may, if required by the Speaker or the Chairman, or both, as the case may be, appoint an advocate to conduct the case against the Judge.

4. Report of Committee.—(1) Subject to any rules that may be made in this behalf, the Committee shall have power to regulate its own procedure in making the investigation and shall give a reasonable opportunity to the Judge of cross-examining witnesses, adducing evidence and of being heard in his defence.

(2) At the conclusion of the investigation, the Committee shall submit its report to the Speaker or, as the case may be, to the Chairman, or where the Committee has been constituted jointly by the Speaker and the Chairman, to both of them, stating therein its findings on each of the charges separately with such observation on the whole case as it thinks fit.

(3) The Speaker or the Chairman, or, where the Committee has been constituted jointly by the Speaker and the Chairman, both of them, shall cause the report submitted under sub-section (2) to be laid, as soon as may be, respectively before the House of the People and the Council of States.

5. Powers of Committee.—For the purpose of making any investigation under this Act, the Committee shall have the powers of a civil court, while trying a suit, under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;

- (c) receiving evidence on oath;
- (d) issuing commissions for the examination of witnesses or documents;
- (e) such other matters as may be prescribed.

The Judges (Inquiry) Rules, 1969

3. Presiding Officer—The member chosen under clause (a) of sub-section (2) of Section 3 shall preside over the meetings of the Inquiry Committee, or, in his absence, the member chosen under clause (b) of sub-section (2) of section 3 shall preside over the meetings of the Inquiry Committee.

6. Objection to charges.—When the Judge appears, he may object in writing to the sufficiency of the charges framed against him and if the objection is sustained by the majority of the members of the Inquiry Committee, the Inquiry Committee may amend the charges and give the Judge a reasonable opportunity of presenting a fresh written statement of defence.

7. Plea of Judge.—(1) If the Judge admits that he is guilty of the misbehaviour, or suffers from the incapacity, specified in the charges framed against him under sub-section (3) of section 3, the Inquiry Committee shall record such admission and may state its findings on each of the charges in accordance with such admission.

(2) If the Judge denies that he is guilty of the misbehaviour, or suffers from the incapacity, specified in the charges framed against him under sub-section (3) of section 3, or if he refuses, or omits, or is unable, to plead or desires that the inquiry should be made, the Inquiry Committee shall proceed with the inquiry.

9. Report of the Inquiry Committee.—(1) Where the members of the Inquiry Committee are not unanimous, the report submitted by the Inquiry Committee under section 4 shall be in

accordance with the findings of the majority of the members thereof.

(2) The presiding officer of the Inquiry Committee shall—

- (a) cause its report to be prepared in duplicate,
- (b) authenticate each copy of the report by putting his signature thereon, and
- (c) forward, within a period of three months from the date on which a copy of the charges framed under sub-section (3) of section 3 is served upon the Judge, or, where no such service is made, from the date of publication of the notice referred to in sub-rule (3) of rule 5, the authenticated copies of the report to the Speaker or Chairman by whom the Committee was constituted, or where the Committee was constituted jointly by them, to both of them:

Provided that the Speaker or Chairman, or both of them (where the Committee was constituted jointly by them), may, for sufficient cause, extend the time within which the Inquiry Committee shall submit its report.

10. Recording of evidence.—(1) The evidence of each witness examined by the Inquiry Committee shall be taken down in writing under the personal direction and superintendence of the presiding officer thereof and the provisions of the Code of Civil Procedure, 1908 (V of 1908), shall, so far as may be, apply to the examination of any witness by the Inquiry Committee.

(2) A copy of the evidence, oral and documentary, received by the Inquiry Committee shall be laid before each House of Parliament along with the report laid before it under section 4.

11. Facilities to be accorded to a Judge for his defence.—(1) Every Judge for whose removal a motion has been admitted shall have a right to consult, and to be defended by, a legal practitioner of his choice.

(2) If the report of the Inquiry Committee contains a finding that the Judge referred to in sub-rule (1) is not guilty of any misbehaviour or does not suffer from any incapacity, then the Central Government shall reimburse such Judge to the extent of such part of the costs of his defence as the Inquiry Committee may recommend.”

14. Since the provisions of Articles 121 and 124 have already been interpreted by the Constitution Benches in **Sub-Committee on Judicial Accountability’s** case and **Sarojini Ramaswamy’s** case, it is not necessary for us to repeat that exercise except making an observation that in view of Article 217(1)(b), that interpretation will be equally relevant in the matter of removal of a Chief Justice or Judge of the High Court. A plain reading of Article 124(4) and clause (b) of Article 217(1) makes it clear that a Judge of the Supreme Court or the High Court cannot be removed except by an order of President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of the House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity. Article 124(5) lays down that Parliament may by law regulate the procedure for the presentation of an address and for investigation and proof of the misbehaviour or incapacity of a Judge under clause (4).

15. Section 3(1) of the Act lays down that if notice of motion is given by the prescribed number of members of the Lok Sabha or the Rajya Sabha, as the case may be, for presenting an address to the President with the prayer for removal of a Judge then, the Speaker or, as the case may be, the Chairman can either admit the motion or refuse to admit the same and for this purpose, he has the discretion to consult any person as he may think fit and consider the material which may be made available to him. Section 3(2) lays down that once the notice of motion is admitted, the Speaker or, as the case may be, the Chairman has to keep the same pending and constitute a Committee for the purpose of making an investigation into the grounds on which the removal of a Judge is sought. Section 3(3) envisages framing of definite charges by the Committee for the purpose of making an investigation. Section 3(4) lays down that the charges framed by the Committee together with a statement of the grounds on which each charge is based shall be communicated to the Judge, who is then entitled to a reasonable opportunity of filing a written statement of defence. Rule 2(c) read with Rule 5 prescribes the format and procedure to be followed for communication of the charges to the Judge. Section 3(8) contemplates amendment of charges by the Committee. This exercise can be undertaken after considering the written statement of the Judge. If the charges are amended, the Judge has to be given opportunity to present a fresh written

statement of defence. Section 3(9) envisages appointment, at the instance of the Speaker or the Chairman, as the case may be, of an advocate to conduct the case against the Judge. Section 4(1) gives power to the Committee to regulate its own procedure in making the investigation. The exercise of this power is subject to the rules, if any, made in that behalf and subject to compliance of the rules of natural justice which means that the Judge is given reasonable opportunity of cross-examining witnesses, adducing evidence and of being heard in his defence. In terms of Section 5, the Committee has the powers of a civil court in respect of the matters enumerated therein, i.e., summoning and enforcing the attendance of any person and examining him on oath; requiring the discovery and production of documents; receiving evidence on oath; issuing commissions for the examination of witnesses or documents and such other matters, as may be prescribed. Section 4(2) read with Rule 9 envisages completion of inquiry within three months from the date of service of charges upon the Judge and submission of report to the Speaker or, as the case may be, to the Chairman. If the Committee is jointly constituted by the Speaker and the Chairman, the report is required to be submitted to both of them. Rule 9(2) empowers the Speaker or the Chairman, as the case may be, to extend the time within which the Committee is required to submit report. After the report is

submitted to the Speaker or the Chairman, the same is required to be laid before the Lok Sabha and the Rajya Sabha.

16. An investigation into the allegation of misbehaviour or incapacity of a Judge is an extremely serious matter. The members of the Lok Sabha or the Rajya Sabha are men of wisdom. They would submit a notice of motion for presenting an address to the President of India for removal of a Judge only when they are *prima facie* satisfied that there exists tangible material warranting an investigation into the allegation of misbehaviour or incapacity of the Judge. When a motion is submitted, the Speaker or the Chairman, as the case may be, is not bound to admit the same as a matter of course. He may, after consulting such persons he may think fit and considering the material, if any made available to him, take decision on the admission of motion. In a given case, he may refuse to admit the motion. However, if the motion is admitted, the statute requires that the Speaker or the Chairman, as the case may be, shall keep the same pending and constitute a Committee consisting of one from among the Chief Justice and other Judges of the Supreme Court, one from among the Chief Justices of the High Courts and a distinguished jurist for making an investigation into the grounds on which the removal of a Judge is sought.

17. Since the members of the Committee are well versed in law and procedure, the legislature has designedly given substantial degree of freedom to the Committee to regulate its own procedure in making the investigation subject, of course, to the rules, if any, made in that behalf. A conjoint reading of Section 3(4), (8) and second part of Section 4 makes it clear that while making the investigation, the Committee has to act in consonance with the rules of natural justice. The Committee is required to communicate the charges framed under Section 3(3) together with a statement of the grounds on which the charges are based to the Judge, give reasonable opportunity to him to present a written statement of defence, to cross-examine the witnesses examined in support of the charges, to produce evidence and to be heard in his defence. There is nothing in the Act or the Rules, which inhibits the Committee from making preliminary inquiry for the purpose of *prima facie* satisfying itself that the allegation contained in the notice of motion warrants framing of one or more charges against the Judge. The use of the expression “definite charges” in Section 3(3) gives a clear indication that before framing the charges, the Committee must apply mind to the allegations contained in the notice of motion and the accompanying material for the purpose of forming an opinion that a case is made out for framing charge. The statute does not contemplate that the Committee should frame charges against the Judge with reference to all the

allegations enumerated in the notice of motion or the accompanying statement without even *prima facie* looking into the nature of allegations and satisfying itself that there is justification for framing the particular charges. It will be naïve to contend that the Committee has no discretion in the matter of framing charges. Rather, the Committee is duty bound to carefully scrutinise the material forming part of the notice of motion and then frame definite charges. The Committee can also receive other material which may support or contradict the allegations enumerated in the notice of motion. In an appropriate case, the Committee can require any person including the one who may have supplied material to the members of the Lok Sabha or the Rajya Sabha, as the case may be, to give clarification on any particular point or make available authentic copies of the documents. The Committee can also call upon such person to file affidavit or make a statement and summon him at the stage of investigation so that the Judge may get an opportunity to cross-examine him. In our view, Shri U.U. Lalit is right in his submission that the investigation contemplated under Section 3 is a participatory investigation in which the Judge against whom charges are framed is entitled to full opportunity to defend himself and there is no bar against making of preliminary inquiry by the Committee as a prelude to the framing of definite charges under Section 3(3).

18. As a corollary to the above discussion, we hold that the procedure adopted by the Committee cannot be faulted on the ground that it made preliminary inquiry before framing charges against the petitioner and relied upon the material received from various sources and recorded statement of some persons. If we were to accept the submission of Shri Patil that before framing definite charges, the Committee cannot make preliminary inquiry, then it would have been obliged to frame charges with reference to all the allegations including those relating to the judicial orders passed by the petitioner and administrative power exercised by him in the capacity of the Chief Justice and this could easily be construed as a direct encroachment upon the independence of the judiciary.

19. Although, reference to Section 3(9) of the Act in the order passed by the Central Government for appointment of Shri U.U. Lalit, Senior Advocate to assist the Committee appears to be wholly unnecessary because that section contemplates appointment of an advocate to conduct the case against the Judge, if the Central Government is ordained to do so by the Speaker or the Chairman, or both, as the case may be, this flaw in the order is not fatal to the proceedings held so far because in exercise of the power vested in it to regulate its procedure the Committee could *suo motu* seek assistance of an advocate. The Committee constituted under Section 3(2) consists of one

person chosen from among the Chief Justice and other Judges of the Supreme Court, one from among the Chief Justices of the High Courts and one distinguished jurist. In the very nature of their functioning, the Chief Justice or the Judge of the Supreme Court and the Chief Justice of the High Court cannot on their own make investigation and assume the role of the prosecutor. The same is true of the distinguished jurist appointed under Section 3(2)(c). They would always need assistance of a person who possesses a legally trained mind. That person has to assist the Committee in various matters including recording of evidence. The Judge against whom the investigation is made is entitled to seek assistance of an advocate and there is no likelihood of any prejudice being suffered by him if the Committee seeks assistance of an advocate for effectively discharging the functions entrusted to it under the Act. Therefore, we do not think that the petitioner is entitled to seek annulment of the proceedings of the Committee on the ground that the Central Government had wrongly invoked Section 3(9) for appointing Shri U.U. Lalit, Senior Advocate to assist the Committee.

20. Before proceeding further, we may consider it appropriate to deal with an ancillary submission made by Shri Basava Prabhu S. Patil, who was supported by Shri A. Sharan, senior counsel, who appeared on behalf of the

petitioner in Writ Petition No.217 of 2011 that the opinion expressed by K. Ramaswamy, J. in his dissenting judgment in **Krishna Swamy's** case should be treated as the law declared by this Court because majority of the Constitution Bench did not deal with the questions formulated in order dated February 27, 1992 passed by the 3-Judge Bench. In this context, it is apposite to note that majority of the Constitution Bench had expressly disagreed with the exposition of law made by K. Ramaswamy, J. This is evinced from paragraph 27 of the judgment, which is extracted below:

“27. We add that on a reconsideration of the matter in the light of the exposition of law made by Brother K. Ramaswamy in his separate opinion circulated to us, we regret our inability to concur with him in the area of his disagreement. On the points decided by us, leaving open the points which do not arise at this stage for our consideration for the reasons we have given, preferring to follow the salutary practice of not deciding any question, much less a constitutional one, unless it is necessary to do so, we would prefer to reserve our opinion on the remaining questions for the occasion, if any, in the future when they arise for decision.”

Therefore, we do not find any merit in the submission made by the learned senior counsel for the petitioner.

21. We shall now take up the third question. According to Mr. Basava Prabhu S. Patil, learned senior counsel for the petitioner, 4 of the 14 charges

framed by the Committee, i.e., charge Nos. 3, 5, 13 and 14, which are extracted below are beyond the scope of the allegations enumerated in the notice of motion:

“CHARGE NO.3

**(RECEIVING OF GIFTS AND ADVANCES
UNILATERALLY ON A REGULAR BASIS)**

Mr. Justice P.D. Dinakaran, further charge against you is that after your elevation as a Judge of the High Court you, your wife and daughters and mother-in-law have been recipients of advances and gifts both in the form of money and valuable property in a regular way. The flow of these gifts and advances that regularly come to you, your wife, daughters and mother in law, seemingly from certain relatives, friends and associates is completely one sided and unilateral. There is hardly, if any at all, gift or advance made by you in favour of any of your donors. It may also be stated that practically in all cases, there is an apparent connection between the gifts and advances coming to you, your wife, daughters and your mother in law and acquisition of valuable and expensive property by you and your family members or any major expenses undertaken by you, your wife or daughters.

In charge No.1 it is stated that these gifts and advances are nothing but your income from undisclosed sources. Even otherwise, the receipt of large sums and valuable properties as gifts on a regular basis and completely unilaterally is a gross abuse of the constitutional office held by you and amounts to judicial misdemeanour and misbehaviour. (Details of gifts and advances are given in the Ground to this Charge.)

CHARGE NO.5**(TAKING HORTICULTURE LOANS ON FALSE
GROUNDS)**

Mr. Justice P.D. Dinakaran, further charge against you is that agricultural loans were taken from Allahabad Bank, George Tower Branch, Chennai by you and your wife Dr. (Mrs.) Vinodhini Dinakaran and further at your instance and for your benefit also in the names of the four bogus companies, namely, M/s Dear Lands India Pvt. Ltd., M/s Canaan Gardens Pvt. Ltd., M/s Amudham Gardens Pvt. Ltd. and M/s Amirtham Gardens Pvt. Ltd. The professed purpose of the loans was to develop horticulture at the Kaverirajapuram lands but actually neither the ostensible applicants (the four companies) nor the professed purpose was true and correctly stated. The object and purpose of the loan was first to launder the money derived from your undisclosed and illegitimate sources (see charge no.1) and second to misappropriate the amount of subsidy granted by the National Horticulture Board to the extent of 20% of the eligible project cost that came as part of the scheme of the loan. The loans were obtained by giving incorrect and false information on a number of issues on the basis of which the bank would grant loan besides misrepresenting the very purpose of the loans. The records show that even though the falsehood of the statements and declarations made in the loan applications became evident at an early stage, nevertheless the bank authorities proceeded to grant the loans, apparently under the undue influence exercised by you by misusing your position as a judge of the Madras High Court.

The loans were not taken for development or promotion of horticulture at the Kaverirajapuram lands is evident from the fact that in all cases repayment of the loans were largely made within a period of four to eight months from the grant of the loans even though under the scheme the repayment would start from the fourth year and would be over by the end of the eighth year. Even though the subsidy by the National Horticulture Board would constitute last instalment for the repayment of the loan, the amounts of subsidy were released within eight months

and long before the last instalments for the repayment of the loans were due.

From the records it is evident that the procurement of the loans did not constitute an honest and bona fide transaction but the loans were taken, at your instance and for your benefit for undisclosed and illegal purposes. The procurement of the bank loans was thus an act of gross misconduct and abuse of your position as a judge of the High Court.

CHARGE NO.13

(OMMISSION TO FILE WEALTH TAX RETURNS)

Mr. Justice P.D. Dinakaran further charge against you is that you in your own individual capacity and as the *de facto* beneficiary of the assets created in the hands of the benamidars and your wife (See Charge Nos.1 & 2) despite being in possession of assets (assets in the nature of huge balance of cash in hand, urban land, and house properties) and deemed assets, failed to file Wealth Tax returns and pay appropriate Wealth tax in respect of such assets, which were clearly exigible to Wealth Tax, such failure to heed a statutory requirement under the law being an omission unbecoming your status of a high constitutional authority and amounts to misconduct.

CHARGE NO.14

(NON PAYMENT OF BILLS)

Mr. Justice P.D. Dinakaran further charge against you is that you did not pay the bills of Madras Race Club for booking 11 rooms and for electricity and illumination charges for the wedding reception of your daughter Amudhaporkodi on 20.12.2008. The charge is that though the bookings were made by Mr. Kaliya Perumal a member of the club, it was for the use and occupation by your instance for your guests/friends etc. And hence, it is you who is liable for making payment to the

club. The club bills remained unpaid at least till October, 2010. Non payment of these bills despite considerable efflux of time is unbecoming of a judge and amounts to misbehaviour on your part.”

22. Although, the language of charges No.3, 5 and 13 and the grounds forming part of these charges are not exactly identical to the allegations contained in the notice of motion, but if the same are read with the explanatory note, it becomes clear that all these charges are founded on the details contained in paragraphs (i) to (iii) of the explanatory note. However, we do not consider it proper to discuss in detail the substance of the charges framed against the petitioner because the investigation being made by the Committee is at a preliminary stage and any observation by this Court may prejudice the cause of the petitioner. At the same time, we have no hesitation in holding that by framing charges No.3, 5 and 13, the Committee did not traverse beyond the scope of the allegations.

23. No doubt, charge No.14 does not have direct traces in the allegations contained in the notice of motion and the explanatory note, but this minor deviation does not warrant quashing of all the charges and it will be open to the petitioner to contend before the Committee that charge No.14 should be

ignored because the same is not founded on the allegations contained in the notice of motion or the explanatory note.

24. In the result, the writ petition is dismissed.

.....J.
[G.S. Singhvi]

.....J.
[Chandramauli Kumar Prasad]

New Delhi
August 26, 2011.