

RAJASTHAN HIGH COURT

D.K. Parihar

Vs.

Union of India

S.B. Civil Writ Petition No. 4274 of 2004

(Sunti Kumar Garg, J.)

19.10.2004

ORDER

Sunti Kumar Garg, J.

1. Heard at the admission stage.
2. This writ petition under Article 226 of the Constitution of India has been filed by the petitioner, who is a practitioner lawyer of this Court, against the respondents Union of India through Ministry of Law, New Delhi and Rajasthan High Court through Registrar General, Jodhpur on 20.9.2004 with the prayer that preventive measures be taken to prevent the falling of human values in this Court and further, the respondent No. 1 Union of India be directed to decide the representation dated 21.6.2004 (Ex. 9) made by the petitioner to the Minister of Law, Central Government, New Delhi.
3. From a bare reading of the present writ petition, it appears that the petitioner has filed this petition aggrieved from the conduct, behavior and judgments passed by some of the Hon'ble Judges of this Court highlighting some of the instances of them. The petitioner has based his petition on several headings such as human values, fight against injustice, all that glitters is not gold, quality of decision, judicial misbehavior etc. etc.
4. The office of this Court has listed this petition before the Single Bench, but according to the petitioner, who himself is a practitioner lawyer of this Court, this petition should have been listed before the Division Bench of this Court as according to him, the matter involved in it is of public interest and it should be treated as PIL and further, since it has been filed against the High Court, therefore, from this point of

view also, this petition should have been listed before the Division Bench of this Court.

5. On the above submission, this court vide order dated 29.9.2004 directed the office to report whether this petition is required to be heard by the Division Bench or Single Bench and the office vide report dated 29.9.2004 has opined that it should be listed before the Single Bench. Thereafter, this Court vide order dated 1.10.2004 has observed that in view of the office report dated 29.9.2004, this matter should be listed before the Single Bench and in these circumstances, the matter has come up before this Single Bench.

6. Since a preliminary objection orally as well as in writing has been raised by the petitioner that this petition should be treated as PIL, therefore, first it has to be answered whether this petition in the present form and in the manner in which it is filed, can be treated as petition for PIL or not.

On Public Interest Litigation (PIL)

7. Lexically the expression Public Interest Litigation (PIL) means a legal action initiated in a Court of law for the enforcement of public interest or general interest in which the public or class of the community has pecuniary interest or some interest by which their legal rights or liabilities are affected.

8. The true public interest litigation is one in which a selfless citizen having no personal motive of any kind except either compassion for the weak and disabled or deep concern for stopping serious public injury approaches the Court for either of the following purposes:-

"(i) Enforcement of fundamental rights of those who genuinely do not have adequate means of access to the judicial system or statutory provisions incorporating the directive principles of State Policy for amelioration of their condition;

(ii) Preventing or annulling executive acts and omissions violative of Constitution or law resulting in substantial injury to public interest."

9. Personal grievances could not be enforced in the garb of public interest litigation.

10. In *Nandjee Singh v. P.G. Medical Students Association*,¹, the Hon'ble Supreme Court has observed that an individual dispute should not be allowed to be converted into a public interest litigation.

11. In the present case, a bare perusal of the writ petition reveals that the petitioner is aggrieved by the conduct, behavior and judgments delivered by some of the Hon'ble Judges of this Court and thus, the grievances, which the petitioner has, are his personal grievances and thus, when this being the position, this petition cannot and should not be termed or regarded as public interest litigation because it has been filed by the petitioner in individual capacity seeking redressal of his own and personal grievances and though he is one of the members of the Bar Association, but this petition has not been filed on behalf of the Bar Association.

12. Thus, it is held that this petition cannot be treated or regarded as PIL and the argument of the petitioner that it should be treated as PIL and hence, should be listed before the Division Bench stands rejected.

13. The next and foremost question for consideration is whether this Court under Article 226 of the Constitution of India can grant relief as sought for by the petitioner through this writ petition and whether the matters involved in this petition are justifiable under Article 226 of the Constitution of India or not.

14. For giving answer to the above question, this Court is required to see and look at some of the provisions of the Constitution of India.

15. The High Court Judges are appointed by the President after consulting the Chief Justice of India, the Governor of the State concerned and in case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court to which the appointment is to be made. (See Article 217(1) of the Constitution of India).

16. As mentioned above, the constitutional provision (Article 217(1)) says that the President appoints these Judges after consulting the Chief Justice of India, the State Governor and the Chief Justice of the High Court concerned. The Central Executive and the State Executive provide the political input in the process of selection of the judges.

17. The Judges of the High Court are constitutional dignitaries/functionaries and for that, the decisions of the Hon'ble Supreme Court in *Supreme Court Advocates-on-Record Association v. Union of India*,² and *Union of India v. Gopal Chandra Misra*,³ may be referred to.

18. Thus, so far as the appointment of Judges of High Court is concerned, the executive power is vested with the President of India and the administrative power is vested in other constitutional functionaries as mentioned above.

Transfer of Judges of High Courts

19. Article 222 of the Constitution of India provides that the President may, after consultation with the Chief Justice of India, transfer a Judge from one High Court to any other High Court.

20. Thus, the executive power to transfer a Judge of one High Court to any other High Court lies with the President of India.

21. Since the transfer of a Judge from one High Court to any other High Court is made by the President of India on the recommendations of Chief Justice of India, therefore, it would not be justifiable on any ground whatsoever. For that the decision of the Hon'ble Supreme Court in the case of Supreme Court Advocates-on-Record Association (supra) may be referred to.

22. However, the transfer of puisne Judges is judicially reviewable only when the recommendation made by the Chief Justice of India in this behalf has not been made in consultation with the four senior-most puisne Judges of the Supreme Court and/or the views of the Chief Justice of the High Court from which the transfer is to be effected and of the Chief Justice of the High Court to which the transfer is to be effected have not been obtained.

23. However, it is made clear that there is no requirement of prior consent of the Judge before his transfer.

Removal of High Court Judges

24. Article 218 of the Constitution of India, reads as follows :-

"Article 218. The provisions of clauses (4) and (5) of Article 124 shall apply in relation to a High Court as they apply in relation to the Supreme Court with the substitution of references to the High Court for references to the Supreme Court."

25. Clauses (4) and (5) of Article 124 of the Constitution of India run as under :-

"Article 124...

(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-third of the members of that House present

and voting has been presented to the President in the same session for such removal on the ground of proved misbehavior or incapacity.

(5) Parliament may by law regulate the procedure for the presentation of an address and for the investigation and proof of the misbehavior or incapacity of a Judge under Clause (4)."

26. Every Judge of the Supreme Court and a High Court on his appointment is irremovable from office during his tenure except in the manner provided in clauses (4) and (5) of Article 124 of the Constitution of India. The law made by the Parliament under Article 124(5), namely, the Judges (Inquiry) Act, 1968 (for short "the Act") (and the Judges (Inquiry) Rules, 1969 framed thereunder) is to be read along with Article 124(5) to find out the constitutional scheme for the removal of a Judge. The law so enacted under Article 124(5) provides that any accusation made against a sitting Judge to initiate the process of his removal from office has to be by not less than the minimum number of members of Parliament specified in the Act, all other methods being excluded. On initiation of the process, the Speaker/Chairman has to decide whether the accusation requires investigation. If he chooses not to act the matter ends there; if the Speaker/Chairman, on a consideration of the materials available and after consulting such persons as he thinks fit, forms the opinion that a *prima facie* case is made out, he constitutes a Committee in accordance with Section 3(2) of the Act. If the Inquiry Committee at the conclusion of the investigation made by it records a finding that the Judge is "not guilty", the process ends. If the finding made by the Inquiry Committee is that the Judge is 'guilty', then Parliament considers the motion for removal of the Judge along with the Committee's report and other available materials including the cause, if any, shown by the Judge concerned against his removal for which he has to be given an opportunity after submission of the report to the Speaker/Chairman under Section 4(2) of the Act. To be effective, this opportunity must include supply of a copy of the report to the Judge concerned by the Speaker/Chairman while causing it to be laid before the Parliament under Section 4(3). If the Parliament does not adopt the motion for removal of the Judge, the process ends there. If the motion for removal of the Judge is adopted by the requisite majority by Parliament culminating in the order of removal by the President of India under Article 124(4) of the Constitution, then only the Judge concerned would have the remedy of judicial review available on the permissible grounds against the order of removal.

27. Thus, it can be said that a High Court Judge may be removed from office in the

same manner as a Supreme Court Judge i.e. on the two Houses of Parliament passing a resolution for his removal, by a special majority, for proved misbehavior or incapacity.

Allegations of bad conduct against a High Court Judge but which fall short of the impeachable conduct.

28. This aspect has been considered by the Hon'ble Supreme Court in *C. RavichandranIyer v. Justice A.M. Bhattacharjee*, ⁴, where it was observed that it is true that the Supreme Court has neither administrative control over the High Court nor power on the judicial side to enquire into the misbehavior of a Chief Justice or Judge of a High Court. When the Bar of the High Court concerned reasonably and honestly doubts the conduct of the Chief Justice of that Court necessarily the only authority under the Constitution that could be tapped is the Chief Justice of India, who in common parlance is known as the head of the judiciary of the Country. The Chief Justice of India was given center stage position. The primacy and importance of the office of the Chief Justice was recognized judicially by the Supreme Court in *K. Veeraswami v. Union of India*, ⁵

In the case of *C. RavichandranIyer* (supra), the Hon'ble Supreme Court has emphasized that bad conduct or bad behavior of a Judge, even though not impeachable may yet be improper conduct not befitting the standard of a Judge. The bad conduct of a Judge has a rippling effect on the reputation of the judiciary as a whole. But the Bar Association ought not to criticize the Judge in such a manner as to amount to contempt of Court. The proper course for it would be to collect specific, authentic and acceptable material concerning the conduct of the judge and the officer-bearers of the Bar Association should see the Judge concerned, or the Chief Justice of the High Court who would make an inquiry and place the matter before the Chief Justice of India. If the conduct of the Chief Justice of the High Court is in question, the office-bearers ought to approach the Chief Justice of India, who will take necessary action in the matter. On the decision being taken by the Chief Justice of India, the matter should rest there.

Thus, yawning gap between proved misbehavior and bad conduct inconsistent with the high office on the part of a non-cooperating Judge/Chief Justice of a High Court could be disciplined by self-regulation through in-house procedure. This in-house procedure would fill in the constitutional gap and would yield salutary effect.

29. If the above legal position in respect of appointment of High Court Judges, transfer

of High Court Judges and removal of High Court Judges is viewed in broad perspective, in my considered opinion, this Court has got no power or jurisdiction to interfere with the purely executive power which the President of India exercises or administrative power which the other constitutional functionaries exercise and when this being the position, the present writ petition is not maintainable and deserves to be dismissed as such because the relief sought for by the petitioner cannot be granted by this Court under Article 226 of the Constitution of India.

30. Before parting with this order, something should be said about the duty of the Judge to maintain high standard of conduct.

Duty of the Judge to maintain high standard of conduct. Its judicial individualism - whether protection imperative ?

31. Judicial office is essentially a public trust. Society is, therefore, entitled to expect that a Judge must be a man of high integrity, honesty and required to have moral vigor, ethical firmness and impervious to corrupt or venial influences. He is required to keep most exacting standards of propriety in judicial conduct. Any conduct which tends to undermine public confidence in the integrity and impartiality of the Court would be deleterious to the efficacy of judicial process. Society, therefore, expects higher standard of conduct and rectitude from a Judge. Unwritten code of conduct is writ large for judicial officers to emulate and imbibe high moral or ethical standards expected of a higher judicial functionary, as wholesome standard of conduct which would generate public confidence, accord dignity to the judicial office and enhance public image, not only of the Judge but the Court itself. It is, therefore, a basic requirement that a Judge's official and personal conduct be free from impropriety; the same must be in tune with the highest standard of propriety and probity. The standard of conduct is higher than that expected of a layman and also higher than that expected of an Advocate. In fact, even his private life must adhere to high standards or probity and propriety, higher than those deemed acceptable for others. Therefore, the Judge can ill-afford to seek shelter from the fallen standard in the society.

32. In *Krishna Swami v. Union of India*,⁶ it was held by the Hon'ble Supreme Court that the holder of office of the Judge of the Supreme Court or the High Court should, therefore, be above the conduct of ordinary mortals in the society. The standards of judicial behavior, both on and off the Bench, are normally high. There cannot, however, be any fixed or set principles, but an unwritten code of conduct of well-established traditions is the guideline for judicial conduct. The conduct that ends

(tends ?) to undermine the public confidence in the character, integrity or impartiality of the Judge must be eschewed. It is expected of him to voluntarily set forth wholesome standards of conduct reaffirming fitness to higher responsibilities.

33. To keep the steam of justice clean and pure, the Judge must be endowed with sterling character, impeccable integrity and upright behavior. Erosion thereof would undermine the efficacy of the rule of law and the working of the Constitution itself. The judges of higher echelons, therefore, should not be mere men of clay with all the fragilities and foibles, human failings and weak character which may be found in those in other walks of life. They should be men of fighting faith with tough fibre not susceptible to any pressure, economic, political or of any sort. The actual as well as the apparent independence of judiciary would be transparent only when the office-holders endow those qualities which would operate as impregnable fortress against surreptitious attempts to undermine the independence of the judiciary. In short, the behaviour of the judge is the bastion for the people to reap the fruits of the democracy, liberty and justice and the antithesis rocks the bottom of the rule of law.

34. Thus :-

(i) Judges, like Caesar's wife, should be above suspicion.

(ii) Lord Hewart's observations made in *R. v. Sussex Justices*,⁷ that it is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done, have to be kept in mind.

35. It may further be stated here that every act or conduct or even error of judgment or negligent acts *per se* does not amount to misbehavior and thus, from that point of view also, this writ petition is not maintainable and liable to be dismissed as such.

36. Apart from this, complaints against High Court Judges are not entertain able and justifiable under Article 226 of the Constitution of India especially when there is specific procedure, as mentioned above, for enquiring into the conduct of the High Court Judges. Thus, from this point of view also, the present writ petition is not maintainable.

Judicial Review

37. Judicial review is a highly complex and developing subject. It has its roots long back and its scope and extent varies from case to case. It is considered to be the basic feature of the Constitution. The Court in exercise of its power of judicial review can

jealously guard the human rights, fundamental rights and the citizens' right of life and liberty as also many non-statutory powers of governmental bodies as regards their control over property and assets of various kinds which could be expended on building hospitals, roads and the like, or overseas aid, or compensating victims of crime.

However, the phrase 'judicial review' would not extend to judicially review the conduct, act, deed, action, behavior etc. of Hon'ble Judges of High Court under Article 226 of the Constitution of India.

38. For the reasons stated above, it is held that the present writ petition under Article 226 of the Constitution of India touching the conduct, misbehavior and delivering of wrong or biased judgments by some of the Hon'ble Judges of this Court is not maintainable and the same deserves to be dismissed as such.

Merits not discussed

39. It is made clear that since the writ petition is going to be dismissed as being not maintainable and in case where the writ petition itself is not maintainable, the merit of that case should not be examined, therefore, the allegations and accusations made by the petitioner in this writ petition against some of the Hon'ble Judges of this Court are not being considered and examined on merits and similarly, the rulings cited at bar by the petitioner are not being discussed here.

Accordingly, this writ petition filed by the petitioner is dismissed as being not maintainable. No order as to costs.

Petition dismissed.

Cases Referred.

1. 1993(3) S.C.T. 534: AIR 1993 SC 2264
2. AIR 1994 SC 268
3. AIR 1978 SC 694
4. 1995(4) SCT 517 (SC): 1995(5) SCC 457
5. 1991(2) R.C.R. (Criminal) 559: 1991(3) SCC 655
6. 1992(4) SCC 605
7. 1924(1) K.B. 256 (259)