SUB-COMMITTEE ON JUDICIAL ACCOUNTABILITY A

v.

UNION OF INDIA AND ORS.

MAY 8, 1991

[B.C. RAY, L.M. SHARMA, M.N. VENKATACHALIAH, J.S. VERMA AND S.C. AGRAWAL,JJ.] B

Constitution of India, 1950/Judges (Inquiry) Act, 1968: Article 124(5)—Enquiry into allegations of misconduct against a sitting Judge of Supreme Court pertaining to conduct as Chief Justice of a High Court—Action of the Speaker of the Lok Sabha in admitting a notice by Members of Parliament and constituting an Inquiry Committee—Validity and implementation of—Application for interlocutory relief—Court directing expeditious hearing of main case. C

A Writ Petition filed by the Petitioner-Committee, a body of Advocates, praying for directions to be issued to the Union Government and the Chief Justice of India, in connection with the enquiry into allegations of misconduct made against a sitting Judge of the Supreme Court, pertaining to his conduct as Chief Justice of a High Court, raised certain questions as to the validity and implementation of the action of the Speaker of the Lok Sabha in admitting a notice of motion moved by the Members of Parliament under Article 124(5) of the Constitution of India, 1950 read with Judges (Inquiry) Act, 1968. D E

Some intervention applications, opposing the Writ Petition, and some other Writ Petitions more or less endorsing the Government's stand raising the question as to whether the motion in question survived the dissolution of the Lok Sabha or not, were also filed. F

Praying for interim direction, which was identical with the prayer in main Writ Petition, it was urged on behalf of the Petitioner-Committee that having regard to the dire need of maintaining public confidence in the institution and its reputation as apex Court, it was necessary that the concerned Judge should abstain from discharging judicial functions during the pendency of the enquiry, and a direction should be issued accordingly, or pending disposal of the Writ Petition, the Union Government should be directed to afford all necessary facilities to the Committee for smooth and efficient functioning. G

Directing expeditious hearing of the Writ Petition and connected matters, this Court, H

A **HELD: 1.1 Having regard to the nature and importance of the issues involved, it is appropriate that the main matter along with the connected writ petitions is heard as expeditiously as possible. Accordingly, this matter should be listed on July 9, 1991 and hearing of the matters proceeded with day-to-day until conclusion.** [744D]

B **1.2 In the circumstances, it is not appropriate to embark upon an examination of the prayer for interlocutory relief. However, the Court's disinclination to issue any interlocutory orders at this stage should not be construed as an expression of opinion on the merits of the issues either way and as an interdiction of the functioning of the Committee, if the Committee otherwise considers appropriate to proceed with the matter.** [744E-F]

C

ORIGINAL JURISDICTION: I.A. No. 1 of 1991.

IN

Writ Petition No. 491 of 1991.

D

WITH

Writ Petition Nos. 541 & 560 of 1991 etc.

(Under Article 32 of the Constitution of India).

E G. Ramaswamy, Attorney General, Shanti Bhushan, Ashok Desai, Hardev Singh, Ms. Indira Jaisingh, P.S. Poti, Rajinder Sachhar, M.K. Ramamurty, R.K. Garg, S.K. Dholakia, Santosh Hegde, V.N. Ganpule, Tapas Ray, N.B. Shetye, P.P. Rao, Kapil Sibal, D.S. Tewatia, Hari Swarup, Jayant Bhushan, Prashant Bhushan, Ms. Madhoo Moolchandani, Ms. Kamini Jaiswal, A.K.
F Srivastava, E.M.S. Anam, N.D. Garg, A.M. Khanwilkar and Ms. A. Subhashini for the Appearing Parties.

The following Order of the Court was delivered:

This writ petition is by a body of advocates styled "Sub-Com-
G mittee on Judicial Accountability" and raises certain questions as to the validity and implementation of the action of the Speaker of the Lok Sabha admitting a notice of motion moved by 108 Members of Parliament under Article 124(5) read with the Judges (Inquiry) Act, 1968 and constituting an Inquiry Committee consisting of a Judge of the Supreme Court, Chief Justice of a High Court and a jurist to
H investigate into the allegations of misconduct made against a sitting

Judge of the Supreme Court pertaining to his conduct as the erstwhile Chief Justice of the Punjab and Haryana High Court. A

The main prayers in the writ petition are that the Union Government be directed to afford facilities to the Inquiry Committee to discharge its constitutional and statutory functions; and for directions to the Hon'ble Chief Justice of India to abstain from allocating any judicial work to the concerned Judge during the pendency of the proceedings before the Committee. In regard to the latter prayer that notice should go to the Hon'ble Chief Justice of India, we think that aspect of the matter should be deferred for the present and considered at the appropriate stage of the final hearing. In regard to the directions to the Union Government, the Union Government by means of an affidavit subscribed to by the Joint Secretary, Ministry of Law and Justice, has made manifest its stand that in its view the motion initiated by the 108 Members of Parliament on which the Speaker took the decision to constitute a Committee had lapsed with the dissolution of the Lok Sabha and that nothing further remains to be done in the matter. It is in that view, as averred in the affidavit, that the Government of India did not advise the President to issue any notification as required by Para 9 read with Para 11(b)(i), Part D of Second Schedule to the Constitution enabling the sitting Judge of this Court and the Chief Justice of High Court to reckon the time spent by them in functioning as members of the Committee as part of their 'actual service'. The contention of the petitioner is that having regard to the constitutional and statutory obligations of the sitting Judges who function in the Committee, the time spent by them in performance of such function is to be reckoned as part of their 'actual service' as judges and no notification under the concerned provisions by the President is necessary.

B C D E

It is relevant to mention here that some of the interveners who seek to oppose the writ petition have, in addition to their stand against the writ petition, also filed individual writ petitions of their own in which, more or less, they seek to endorse the stand taken by the Government raising the question as to whether the motion survives the dissolution of the Lok Sabha or not. F

Shri Shanti Bhushan, learned counsel for the petitioner made an impassioned plea that having regard to the dire need of maintaining public confidence in the apex institution and its reputation it is necessary that the concerned Judge should abstain from discharging judicial functions during the pendency of the enquiry against him. In the alternative, it is submitted that if a direction to that effect is not issued, G H

A it should at the least necessarily be directed that pending disposal of the writ petition on merits, the Union of India shall afford to the Committee such facilities as may be necessary for its effective and prompt functioning. Shri Shanti Bhushan submitted that even if ultimately the writ petition fails, no loss or injury would be caused to anybody and what would have resulted would only be that the eminent B body of Judges would have occasion to look into the allegations against a sitting Judge and if they found the allegations to be baseless, the concerned Judge would be cleared of the imputations and cloud against his conduct. He urged, if such a direction or interim mandamus is not issued it would seriously impair the image of the Court as the apex Court in the country and affect the confidence of the people in C the quality of justice dispensed by it.

We have given our anxious consideration to the matter and having regard to the nature and importance of the issues involved it is appropriate that the main matter along with the connected writ petitions is heard as expeditiously as possible. We, therefore, direct that D his matter be listed on July 9, 1991 with a direction that hearing of the matters be proceeded with day-to-day until conclusion. We also indicate that arguments on all sides should be completed within a period of ten working days and the learned counsel for all the parties and interveners should file their written arguments in advance latest by July 1, 1991. The actual hearing time to each of the counsel will be E apportioned at the commencement of the hearing on July 9, 1991. In this view of the matter, we think it appropriate not to embark upon an examination of the contentions in support of and the prayer for interlocutory relief.

We, however, make it clear that our disinclination to issue any F interlocutory orders at this stage shall not be construed as an expression of opinion on the merits of the issues either way and shall not also be construed as an interdiction of the functioning of the Committee if the Committee otherwise considers appropriate to proceed with the matter.

G We also make it clear that during the pendency of these matters before this Court no proceeding pending or filed hereafter in any other court shall be heard or any order passed therein relating to the issues involved in these matters.

NPV Petition dispose of.