

CASE NO.:
Writ Petition (civil) 218 of 2003

PETITIONER:
Indira Jaising

RESPONDENT:
Registrar General, Supreme Court of India & Anr.

DATE OF JUDGMENT: 09/05/2003

BENCH:
S. RAJENDRA BABU & G.P. MATHUR

JUDGMENT:
J U D G M E N T

RAJENDRA BABU, J. :

A Senior Advocate practising in this Court has filed this petition purporting to be one under Article 32 of the Constitution of India in public interest primarily for the publication of the inquiry report made by a Committee consisting of two Chief Justices and a Judge of different High Courts in respect of certain allegations of alleged involvement of sitting Judges of the High Court of Karnataka in certain incidents and also for a direction to any professional and independent investigating agency having expertise to conduct a thorough investigation into the said incident and to submit a report on the same to this Court.

In the Chief Justices' Conference held in December 1999, 16 clauses formed part of the Code of Conduct in addition to the declaration of assets by the Judges and In-House procedure was suggested in the event of any complaint against any Judge. However, sanction for these guidelines is absent. In our constitutional scheme it is not possible to vest the Chief Justice of India with any control over the puisne Judges with regard to conduct either personal or judicial. In case of breach of any rule of the Code of Conduct, the Chief Justice can choose not to post cases before a particular Judge against whom there are acceptable allegations. It is possible to criticise that decision on the ground that no enquiry was held and the Judge concerned had no opportunity to offer his explanation particularly when the Chief Justice is not vested with any power to decide about the conduct of a Judge. There is no adequate method or machinery to enforce the Code of Conduct. Article 124 provides for appointment of Judges of this Court and also their removal. Similarly, Article 217 deals with the appointment and removal of the Judges of the High Court. In the Judges' Enquiry Act of 1968 provisions are made for investigation into mis-behaviour or incapacity of a Judge. It may be noted that since Judges of the superior Courts occupy very high positions, disciplinary proceedings which exist in the case of all other employees cannot be thought of.

The Committee referred to by the petitioner is stated to have been constituted as a part of In-House procedure. A Judge cannot be removed from his Office except by impeachment by a majority of the House and a majority of not less than 2/3rd present and voting as provided by Articles 124 and 217 of the Constitution of India. The Judges (Inquiry) Act, 1968 has been enacted providing for the manner of conducting inquiry into the allegation of judicial conduct upon a Motion of Impeachment sponsored by at least 100 Lok Sabha members or 50 Rajya Sabha members. The Presiding Officer of the concerned House has the power to constitute a Committee consisting of three persons as enumerated therein. No other disciplinary inquiry is envisaged or contemplated either under the Constitution or under the Act. On account of this lacuna In-House procedure has been adopted for inquiry to be made by the peers of Judges for report to the Hon'ble the Chief Justice of India in case of a complaint against the Chief Justices or Judges of the High Court in order to find out truth of the imputation made in the complaint and that In-House inquiry is for the purpose of

his own information and satisfaction. A report made on such inquiry if given publicity will only lead to more harm than good to the institution as Judges would prefer to face inquiry leading to impeachment. In such a case the only course open to the parties concerned if they have material is to invoke the provisions of Article 124 or Article 217 of the Constitution, as the case may be. It is not appropriate for the petitioner to approach this Court for the relief or direction for release of the Report, for what the Chief Justice of India has done is only to get information from peer Judges of those who are accused and the report made to the Chief Justice of India is wholly confidential. The said report is only for the purpose of satisfaction of the Chief Justice of India that such a report has been made. It is purely preliminary in nature, ad hoc and not final. If the Chief Justice of India is satisfied that no further action is called for in the matter, the proceeding is closed. If any further action is to be taken as indicated in the In-House procedure itself, the Chief Justice of India may take such further steps as he deems fit. Therefore, in the hierarchy of the courts, the Supreme Court does not have any disciplinary control over the High Court Judges, much less the Chief Justice of India has any disciplinary control over any of the Judges. That position in law is very clear. Thus, the only source or authority by which the Chief Justice of India can exercise this power of inquiry is moral or ethical and not in exercise of powers under any law. Exercise of such power of the Chief Justice of India based on moral authority cannot be made subject matter of a writ petition to disclose a report made to him.

Heavy reliance has been placed upon the decisions of this Court in S.P. Gupta vs. Union of India & Anr., 1981 (Supp.) SCC 87, The State of U.P. vs. Raj Narain & Ors., 1975 (4) SCC 428, Union of India vs. People's Union for Civil Liberties (PUCL) & Anr. 2002 (5) SCC 294, Secretary, Ministry of Information & Broadcasting, Government of India & Ors. vs. Cricket Association of Bengal & Ors., 1995 (2) SCC 161. The principles stated in these decisions have been reconsidered by this Court in People's Union for Civil Liberties (PUCL) & Anr. vs. Union of India & Anr., JT 2003 (2) SC 528. It is no doubt true that in a democratic framework free flow of information to the citizens is necessary for proper functioning particularly in matters which form part of public record. The decisions relied upon by the learned counsel of the petitioner do not also say that right to information is absolute. There are several areas where such information need not be furnished. Even the Freedom of Information Act, 2002, to which also reference has been made by the learned counsel of the petitioner, does not say in absolute terms that information gathered at any level in any manner for any purpose shall be disclosed to the public. The inquiry ordered and the report made to the Chief Justice of India being confidential and discreet is only for the purpose of his information and not for the purpose of disclosure to any other person. The principles stated in the above decisions are in different context and those principles cannot be invoked in a case of this nature, which is of exceptional category. Therefore, the first contention advanced on behalf of the petitioner by Shri Shanti Bhushan for a direction to release the said Report has got to be rejected in limine.

Reference has also been made by Shri Shanti Bhushan to a statement made by Hon'ble Shri Justice Sabyasachi Mukharji, former Chief Justice of India, while withdrawing the work from Justice V. Ramaswami. Thereafter, he constituted a Committee consisting of three Judges as to what further course of action he should take. It is stated that the Report of said Committee was also made public. We are afraid that no parallel or analogy can be drawn on this incident. In the first place, the learned Chief Justice in that case unilaterally withdrew work from Justice V. Ramaswami. That was his own decision and perhaps to tell the public as to what he was doing he made the said statement to which reference has been made by Shri Shanti Bhushan. Again, having withdrawn the work but when it became necessary to reassign the work pursuant to the report of three Judges, he felt appropriate that the said Report should be made public. One thing should be borne in mind that in either of these incidents Justice V. Ramaswami had not participated on the ground that the only manner in which he could be proceeded against is as provided under Article 124 of the Constitution.

Further, the claim for a direction to any professional and independent

investigating agency to conduct an inquiry into the said alleged incident cannot be accepted because appropriate course for the petitioner would be to approach the concerned authorities as enumerated in Article 217 of the Constitution.

If the petitioner can substantiate that any criminal offence has been committed by any of the Judges mentioned in the course of the petition, appropriate complaint can be lodged before a competent authority for taking action by complying with requirements of law. There is hardly any need for this Court to give any such direction in the matter. Therefore, we decline to entertain this petition.

This petition stands dismissed.

JUDIS