

CAPT. VIRENDRA KUMAR, ADV.

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v.
SH. SHIV RAJ PATIL, SPEAKER LOK SABHA

JULY 29, 1993

[M.N.VENKATACHALIAH, CJ. AND S. MOHAN, J.]

B

Constitution of India, 1950 : Articles 32, 105, 124(5)—Motion of Impeachment—Voting in Parliament—Nature of Process—Held: Political—Parliament sovereign in the conduct of its business.

This Writ Petition related to the motion of impeachment of Judge of this Court. The Petitioner contended that he served on the Speaker of Lok Sabha, a communication addressed to the members of a parliament and had this communication been circulated, the MPs would have refused to obey the last minute oral whip issued by certain political parties to abstain from voting. The petitioner also contended that since the proceedings before Parliament are quasi judicial in nature, the Speaker of the Lok Sabha ought to have intervened and ordered the MPs to be present in the House and vote, and that the Speaker failed in his duty. The petitioner therefore urged that the voting process be repeated afresh, after circulating his communication to the MPs.

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Dismissing the Writ Petition, this Court

E

HELD : 1. At the stage of voting on the motion, the process is political. The Parliament is sovereign with respect to conduct of its business. This Court cannot have any say in that political process. If, therefore, members had chosen to be absent, it entirely depends upon their will. [448-G]

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Sub-Committee on Judicial Accountability v. Union of India & Ors., [1991] 4 SCC 699; followed.

TRS Allan, "*The limits of Parliamentary Sovereignty*" (1985) Public Law 614; relied on.

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Taj Kiran v. Sanjiva Reddy, AIR (1970) SC 1573; referred to.

ORIGINAL JURISDICTION : Writ Petition (Crl.) No. 216 of 1993.

(Under Article 32 of the Constitution of India.)

H

A Petitioner-in-person.

The Judgment of the Court was delivered by

B **MOHAN, J.** Impelled by a desire to espouse a public cause, so the petitioner claims, this Writ Petition has come to be preferred. The cause relates to the motion of impeachment of Mr. Justice V. Ramaswami, a Judge of this Court.

C Notice was given by 108 members of the Ninth Lok Sabha for presenting an address to the President for removal of Mr. Justice V. Ramaswami. On March 12, 1991 the motion was admitted. The Committee was constituted in terms of section 3(2) of the Judges (Inquiry) Act. After the Committee rendered its finding the motion was to be taken up by the Member of Parliament for consideration on 10th May, 1993.

D The Petitioner alleges that he served on the Speaker of the Lok Sabha a nine page communication for circulation to the Members of the Parliament. On 8th May, 1993 the Congress (I) publicly announced the Members of Parliament to cast "a conscience vote" while the AIADMK party had announced that it would abstain from voting. The petitioner coming to know about the non-circulation of the petitioner's papers by the Speaker, circulated the sets of the papers to the press and the other media so that the Members of Parliament might know about these papers and demand it from the Speaker before casting the conscience vote. The petitioner urges that the press did not publish and the other media did not announce the news of the papers presented to the Speaker. The impeachment proceedings were taken up. After the learned counsel for the Judge concluded his arguments, the voting was to take place. The Congress party issued an oral whip to abstain from voting. It is this abstention, which is questioned by the petitioner in this writ petition.

G The petitioner would urged had the petitioner's papers been circulated, the Members of Parliament would have refused to obey the last minute oral whip.

H The speaker's permission to allow a counsel to appear for the Judge and argue the case before the house was no permitted either by the Judges (Inquiry) Act of the Constitution. This possibly helped the Members of Parliament to obey the last minute oral whip as there was no counsel

appointed to speak on behalf of the House and no debate was allowed. A
Issuance of oral whip was illegal.

The proceedings before the Parliament are quasi judicial in nature. Therefore, the Speaker of the Lok Sabha ought to have intervened and ordered the Members of Parliament present in the House to vote. The Speaker failed in his duty because the members of Parliament had failed to determine the mandate on the motion of impeachment by the illegal oral whip by Congress I and AIADMK party's earlier decision to abstain. The Constitutional Process has been set at naught. On these allegations, the petitioner makes the following prayers: B

(i) To circulate the petitioner's papers to all the MPs and then get the voting process only, repeated afresh and anew, to determine and decide the motion to impeach Mr. Justice V. Ramaswami; C

(ii) Or, call only those MPs who being present in the House abstained to vote, alongwith others, who were then absent for one reason or the other but now choose to come and vote, to cast their votes. Adding these fresh votes to those who had already voted for or against should the result/judgment be announced; D

(iii) For either of the above process taking place, the Congress (I) alongwith AIADMK party and other vote abstaining MPs be asked to bear the expenses in *toto* for the fresh and/or additional voting processes proportionately as per the number of abstaining MPs of the concerned parties to actually spell out practically the measure of austerity which was commonly announced policy of all the political parties. E

The petitioner appearing-in-person would reiterate the same points in his oral submission. F

The short question that arises for consideration is as to the nature of proceedings relating to impeachment of the Judge. We are relieved of the necessity of deciding this question by ourselves because the matter is concluded by an authoritative ruling by Constitution Bench of this Court. G

In *Sub-Committee on Judicial Accountability v. Union of India & Ors.*, [1991] 4 SCC 699 in relation to the very impeachment motion a contention was urged with the dissolution of the Lok Sabha on 13.3.91 the motion for H

A impeachment would lapse. In that context, this Court held as to the nature of impeachment proceedings as follows:-

B "Accordingly, the scheme is that the entire process of removal is in two parts - the first part under clause (5) from initiation to investigation and proof of misbehaviour or incapacity is covered by an enacted law, Parliament's role being only legislative as in all the laws enacted by it, and the second part only after proof under clause (4) is in Parliament, that process commencing only on proof in accordance with the law enacted under clause (5). Thus the first part is entirely statutory while the second part alone is the parliamentary process." (Para 81 @ pp 747-78)

D "Similarly, use of word 'motion' to indicate the process of investigation and proof in the Judges (Inquiry) Act, 1968 because the allegations have to be presented to the 'Speaker' does not make it 'motion in the House' notwithstanding use of that expression in section 6. Otherwise Section 6 would not say that no further step is to be taken in case of a finding of 'not guilty'. It only means that when the allegation is not proved, the Speaker need not commence the process under clause (4) which is started only in case it is proved. The Speaker is, therefore, a statutory authority under the Act chosen because the further process is parliamentary and the authority to make such a complaint is given to Members of Parliament. Moreover, the enactment under Article 124(5) cannot be a safe guide to determine the scope of Article 124(5)." (Para 91 @ pp 750)

F "Indeed, the Act reflects the constitutional philosophy of both the judicial and political elements of the process of removal. The ultimate authority remains with the Parliament in the sense that even if the committee for investigation records a finding that the Judge is guilty of the charges it is yet open to the Parliament to decide not to present an address to the President for removal. But if the committee records a finding that the Judge is not guilty, then the political element in the process of removal has no further option. The law is, indeed, a civilised piece of legislation reconciling the concept of accountability of Judges and the values of judicial independence." (Para 97 @ pp 751-752)

T.R.S. Allan says while talking of Parliamentary Sovereignty:-

"No greater testimony exists to the power and resilience of positivism in modern legal thought than the debate between constitutional lawyers about the nature of parliamentary sovereignty. At the root of almost all analyses of the nature and scope of the doctrine lies an unquestioned separation of legal from political principle. The political notion of the ultimate sovereignty of the electorate must be distinguished from the legal doctrine of legislative supremacy."

"Dicey gives implicit support for this view when he considers the distinction between legal and political sovereignty in the context of conventions. He observes that, 'if Parliament be in the eye of the law a supreme legislature, the essence of representative government is that the legislature should represent or give effect to the will of the political sovereign, i.e. of the electoral body, or of the nation.' His examination of a number of important constitutional conventions leads him to the conclusion that they are united in character by the possession of a single purpose - to secure that Parliament and government are ultimately subject to the wishes of the electorate. The right to demand a dissolution is the most striking example, since it represents an appeal from the legal to the political sovereign. 'The conventions of the Constitution now consist of customs which (whatever their historical origin) are at the present day maintained for the sake of ensuring the supremacy of the House of Commons, and ultimately, through the elective House of Commons, of the nation. Our modern code of constitutional morality secures, though in a roundabout way, what is called abroad the 'sovereignty of the people'. Dicey presents conventions as a means of harmonising legal and political sovereignty, which remain conceptually distinct." (TRS Allan, *The limits of Parliamentary Sovereignty*" (1985) Public Law 614)

We may also refer to Article 105:-

"(1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament.

A (2) No member of Parliament shall be liable to any proceedings
in any Court in respect of anything said or any vote given by him
in Parliament of any committee thereof, and no person shall be so
liable in respect of the publication by or under the authority of
either House of Parliament of any report, paper, votes or proceed-
B ings. (Emphasis supplied)

(3)

While construing this Article this Court observed in *Tej Kiran v Sanjiva Reddy*, AIR (1970) SC 1573, as under :-

C "..... The article means what it says in language which could
not be plainer. The article confers immunity *inter alia* in respect
of "anything said in Parliament". The word "anything" is of the
widest import and is equivalent to 'everything'. The only limitation
D arises from the words "in Parliament" which means during the
sitting of Parliament and in the course of the business of Parlia-
ment. We are concerned only with speeches in Lok Sabha. Once
it was proved that Parliament was sitting and its business was being
transacted, anything said during the course of that business was
immune from proceedings in any court. This immunity is not only
E complete but is as it should be. It is of the essence of parliamentary
system of Government that people's representatives should be free
to express themselves without fear of legal consequences. What
they say is only subject to the discipline of the rules of Parliament,
the good sense of the members and the control of proceedings by
the Speaker. The courts have no say in the matter and should really
F have none". (p. 1574)

At the stage of voting on the motion. The process is political. The
Parliament is sovereign with respect to conduct of its business. This Court
cannot have any say in that political process. If, therefore, members had
G chosen to be absent, it entirely depends upon their will. Accordingly, we
conclude that the prayers of the petitioner cannot be entertained. The Writ
Petition will stand dismissed.

G.N.

Petition dismissed.