

MS. LILY THOMAS, ADVOCATE
v.
SPEAKER, LOK SABHA AND OTHERS

AUGUST 24, 1993

[R.M. SAHAI AND N.P. SINGH, JJ.]

Constitution of India 1950—Article 124(4)—Whether abstaining from voting by a member of Parliament, on motion for impeachment against a Supreme Court sitting judge, could be deemed to be a supporting vote—Whether the right to vote includes the right to remain neutral—Whether exercise of right to vote on motion for impeachment is judicial in character and therefore refusal of members or their abstaining from voting being abdication of exercise of judicial power could be set right judicially, assuming that the abstainers, from voting had voted in favour of the motion.

The petitioner had filed writ petition under Article 32 of the Constitution of India, seeking declaration that the motion of impeachment, moved in Lok Sabha, against a sitting judge of this Court, seeking to remove him from office, may be deemed to have been carried under Article 124(4) of the Constitution, by support of majority of the members, assuming that the members, who abstained from voting had supported the motion. The petitioner urged that jurisdiction of Parliament while exercising right to vote on impeachment motion is judicial in character and therefore, refusal of members or their abstaining from voting, was abdication of exercise of judicial power, which could be set right judicially, assuming that such members voted in favour of the motion. The petitioner contended that Parliament is constitutionally obliged either to support or oppose the motion and that silence or acquiescence amounted to acceptance or approval.

Dismissing the writ petition, this Court

HELD : 1. That proceedings for impeachment partake of judicial character, because it is removal after inquiry and investigation. The statutory process starts when the speaker exercises duty under the Judges Enquiry Act and comes to an end when the Committee appointed by the speaker submits its report. The debate on the motion thereafter in the

A Parliament, the discussion and voting is more political in nature.

[794-A-B]

Sub Committee on Judicial Accountability v. Union of India and Others, [1991] 4 SCC 699, relied on.

B 2. Voting is formal expression of will or opinion. The right to vote means right to exercise in favour or against the motion or resolution and implies the right to remain neutral as well. Conceptually it is not aligning with either view. [794-C]

C 3. Article 124(4) of the Constitution does not exclude neutrality or abstaining from voting. Halsbury's *Laws of England* also indicate that the right to vote is optional. When a person entitled to vote participates in discussion but abstains from voting, it is neither neutrality nor expression of view one way or the other. Yet it is legitimate and valid. If non exercise of right by a member, though present, amounts to support, it shall frustrate the entire removal process based on exercise of the right.

D [794-E, F]

E 4. The procedure of voting in Lok Sabha also recognises that a member may abstain from voting. Abstaining or refusal to express opinion by casting of vote cannot be construed as deemed support of the motion. The language of Article 124(4), the purpose of its enactment, the objective behind it, do not warrant such construction. [795-D]

M.N. Kaul and S.L. Shakhder; *Practice and Procedure of Parliament*, referred to.

F ORIGINAL JURISDICTION : Writ Petition (Civil) No. 543 of 1993.

(Under Article 32 of the Constitution of India.)

Petitioner in person.

G The Judgment of the Court was delivered by

H R.M. SAHAI, J. The petitioner, a practising advocate of this Court, has filed this petition under Article 32 of the Constitution seeking declaration that the Motion of Impeachment against Mr. Justice V. Ramaswami, a sitting judge of this Court moved in the Lok Sabha seeking to remove him from the office of Judge, should be deemed to have been carried by

construing the expression, support of the majority in Article 124(4) in such a manner that any member who abstained from voting should be deemed to have supported the Motion. It was also claimed that this Court may recommend for repeal of Article 124(4) of the Constitution as it has been rendered unworkable and non-functional and be substituted by an appropriate provision. Reliance was placed on Halsbury's *Laws of England* Vol. 10 and it was urged that although the Parliament was not strictly speaking a judicial body but its jurisdiction while exercising the right of vote on an Impeachment Motion is judicial, and, therefore, the refusal of the members or their abstaining from voting was an abdication of exercise of judicial power which may be set right judicially by assuming that those who abstained from voting should be deemed to have voted in favour of the Motion. The petitioner urged that silence or acquiescence amounts to acceptance or approval, therefore, a member of Parliament who under the procedure did not cast his vote obviously was not against the Motion, and, therefore, he should be deemed to have supported it. She urged that United States there is specific provision permitting such abstention but in absence of any such power a member of the Parliament is constitutionally obliged either to support or oppose a Motion. Once he did not oppose it he should be deemed to have supported it.

Article 124(4) is extracted below :

"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 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 for such removal on the ground of proved misbehaviour or incapacity."

In *Sub-Committee on Judicial Accountability v. Union of India & others*, [1991] 4 SCC 699, the Constitution Bench after detailed discussions of analogous provision in other constitutions and practice prevalent in different countries observed at page 731 that, 'the constitutional scheme for removal of a judge, seeks to achieve a judicial blend of the political and judicial process'. The Bench held that the constitutional process upto the point of admission of Motion, constitution of Committee and recording of findings by the Committee were not proceedings in the Houses of Parlia-

- A ment. In our opinion proceedings for impeachment partake of judicial character because it is removal after inquiry and investigation. The statutory process appears to start when the Speaker exercises duty under the Judges Enquiry Act and comes to an end once the Committee appointed by the Speaker submits the report. The debate, on the motion thereafter in the Parliament the discussion and the voting appear more to
- B be political in nature. Voting is formal expression of will or opinion by the person entitled to exercise the right on the subject or issue in question. In Black's *Law Dictionary* it is explained as, 'the expression of one's will, preference, or choice, formally manifested by member of a legislative or deliberative body, or of a constituency or a body of qualified electors, in
- C regard to the decision to be made by the body as a whole upon any proposed measure or proceeding or in passing laws, rules or regulations, or the selection of an officer or representative'. Right to vote means right to exercise the right in favour of or against the motion or resolution. Such a right implies right to remain neutral as well. 'Neutral' means, 'indifferent,
- D unbiased, impartial, not engaged on either side'.-Conceptually it is not aligning with either view. But what happens where a person entitled to vote on a resolution participates in discussion but abstains from voting. It is neither neutrality nor expression of opinion one way or the other. Yet it is legitimate and valid. In removal of an elected representative by vote of no-confidence neutrality, partial or complete, is not unknown. A construction as suggested by the petitioner would lead to uncertainty as if non-exercise of right by a member, even though present, amounts to support it shall frustrate the entire removal process based on exercise of the right.
- E

Article 124(4) does not exclude neutrality or abstaining from voting.

- F Use of the expression, 'not less than two-thirds of the members present and voting' in the Article implies that the Motion shall be carried only if the requisite numbers expressed their opinion by casting vote in support of the Motion. One may be present and yet not voting. A reading of paragraph 1163 of Vol. 34 of Halsbury's *Laws of England* indicates that
- G when division becomes necessary then the Speaker directs, those in support to go in the right lobby and those who oppose in left lobby. And, 'the members who take part in it pass through one or other of the lobbies, give their names to the clerks who sit at desks, and are counted by the tellers as they leave the respective lobbies. After at least six minutes have elapsed since the order for clearing the lobbies, the Speaker orders the doors giving
- H access to the lobby to be locked. When all members who *wish* to record

their votes have passed out of the two lobbies and been counted, the four tellers go to the table of the House; they then report the numbers of the division which are announced from the chair'. The use of the word 'wish' indicates that the right to vote is optional. The procedure of going into lobbies apply to those who wish to vote. In '*Practice and Procedure of Parliament*' by M.N. Kaul and S.L. Shakhder the procedure of voting in Lok Sabha is described thus,

"Under the automatic vote recorder system, each member casts his vote from the seat allotted to him by pressing the requisite button provided for the purpose. A push button set containing a pilot light and three push buttons - a green button for 'AYES', a red button for 'NOES' and a black button for 'ABSTAIN'- together with a push switch suspended by a wire, is provided at the seat of each member."

The voting procedure thus itself recognises that a member may abstain from voting. Therefore, abstaining or refusal to express opinion by casting vote in favour of or against the Motion cannot be construed on any rule of construction or constitutional interpretation as deemed support of the motion. The language of the Article, the purpose of its enactment, the objective behind it do not warrant such construction. When the Constitution mandates that a judge can be removed for proved misbehaviour or incapacity only when out of the members present two-third express their opinion in favour of such a Motion by exercising their right of voting then there is no scope for assumed voting or assumed expression of opinion by invoking the principle that silence amounts to acquiescence in favour of the Motion. The submission made by the petitioner is contrary to explicit language of the Article and inherent philosophy of Parliamentary sovereignty.

Consequently, the petition fails and is dismissed.

J.S.G.

Petitions dismissed.