

C. Ravichandran Iyer v. Justice A.M. Bhattacharjee
(1995) 5 SCC 457

K. Ramaswamy, J

Background

- The petitioner (an advocate) has initiated the PIL under Article 32 seeking to issue an appropriate writ/ order/ direction restraining permanently the Bar Council of Maharashtra and Goa (BCMG), Bombay Bar Association (BBA) and the Advocates Association of Western India (AAWI), coercing Justice A.M. Bhattacharjee , Chief Justice of Bombay High Court, to resign from the office as Judge.
- He also sought an investigation by the CBI into the allegations made against the Justice A.M. Bhattacharjee and if the same are found true, to direct the, Speaker, Lok Sabha to initiate action for his removal under Article 124(4) and (5) read with Article 218 of the Constitution of India and Judges (Inquiry) Act, 1968
- This Court on 24-3-1995 issued notice to BCMG, BBA and AAWI only and rejected the prayer for interim direction to the President of India and the Union of India not to give effect to the resignation by the Justice A.M. Bhattacharjee. SC also issued notice to the Attorney General for India and the President of the Supreme Court Bar Association (SCBA). The BBA filed a counter-affidavit through its President, Shri Iqbal Mahomedali Chagla.
- Shri F.S. Nariman, learned Senior Counsel appeared for the BBA and Shri Harish N. Salve, learned Senior Counsel, appeared for AAWI, the 4th respondent. The learned Attorney General also assisted the Court.

Key aspects

- Whether a Bar Council or Bar Association is entitled to pass resolution demanding a Judge to resign, what is its effect on the independence of the judiciary and whether it is constitutionally permissible
- Rule of Law and Judicial Independence -Why need to be preserved? –Ref; S.P. Gupta v. UOI(1981 Supp SCC 87)
- Judicial individualism - Whether needs protection?
- Scope and meaning of ‘misbehaviour’ in Article 124(4)-Ref Krishna Swami case, First Grade Pleader, Re (AIR 1931 Mad 422)
- Role of the Bar Council or Bar Associations - Whether unconstitutional? Ref: Brahma Prakash Sharma v. State of UP (AIR 1954 SC 10)
- Primacy of the Chief Justice of India-Ref: Supreme Court Advocates-on-Record Assn. v. Union of India [(1993) 4 SCC 441], Sub-Committee on Judicial Accountability v. Union of India [(1991) 4 SCC 699]

Whether a Bar Council or Bar Association is entitled to pass resolution demanding a Judge to resign, what is its effect on the independence of the judiciary and whether it is constitutionally permissible

- Our Constitution permits removal of the Judge only when the motion was carried out with requisite majority of both the Houses of Parliament recommending to the President for removal. The Constitution does not permit any action by any agency other than the initiation of the action under Article 124(4) by Parliament.
- Ref: **Sub-Committee on Judicial Accountability v. Union of India [(1991) 4 SCC 699]**
“discussion of the conduct of a Judge or any evaluation or inferences as to its merit is not permissible elsewhere except during investigation before the Inquiry Committee constituted under the Act for this purpose”
- “...no other agency or authority like the CBI, Ministry of Finance, the Reserve Bank of India ... would investigate into the conduct or acts or actions of a Judge. No mandamus or direction would be issued to the Speaker of Lok Sabha or Chairman of Rajya Sabha to initiate action for impeachment.

Duty of the Judge to maintain high standard of conduct

- “..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 of 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.
- Ref: **Krishna Swami v. Union of India** [(1992) 4 SCC 605] – “There cannot, however, be any fixed or set principles, but an unwritten code of conduct of well-established traditions is the guidelines for judicial conduct. The conduct that 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”
- 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.

Procedure

- “...where the complaint relates to the Judge of the High Court, the Chief Justice of that High Court, after verification, and if necessary, after confidential enquiry from his independent source, should satisfy himself about the truth of the imputation made by the Bar Association through its office-bearers against the Judge and consult the Chief Justice of India, where deemed necessary, by placing all the information with him.
- When the Chief Justice of India is seized of the matter, to avoid embarrassment to him and to allow fairness in the procedure to be adopted in furtherance thereof, the Bar should suspend all further actions to enable the Chief Justice of India to appropriately deal with the matter. This is necessary because any action he may take must not only be just but must also appear to be just to all concerned, i.e., it must not even appear to have been taken under pressure from any quarter. The Chief Justice of India, on receipt of the information from the Chief Justice of the High Court, after being satisfied about the correctness and truth touching the conduct of the Judge, may tender such advice either directly or may initiate such action, as is deemed necessary or warranted under given facts and circumstances. If circumstances permit, it may be salutary to take the Judge into confidence before initiating action.”

Contd.

- “On the decision being taken by the Chief Justice of India, the matter should rest at that. This procedure would not only facilitate nipping in the bud the conduct of a Judge leading to loss of public confidence in the courts and sustain public faith in the efficacy of the rule of law and respect for the judiciary, but would also avoid needless embarrassment of contempt proceedings against the office-bearers of the Bar Association and group libel against all concerned. The independence of judiciary and the stream of public justice would remain pure and unsullied. The Bar Association could remain a useful arm of the judiciary and in the case of sagging reputation of the particular Judge, the Bar Association could take up the matter with the Chief Justice of the High Court and await his response for the action taken thereunder for a reasonable period.
- In case the allegations are against Chief Justice of a High Court, the Bar should bring them directly to the notice of the Chief Justice of India. On receipt of such complaint, the Chief Justice of India would in the same way act as stated above qua complaint against a Judge of the High Court, and the Bar would await for a reasonable period the response of the Chief Justice of India”.

Held

- “It would thus be seen that yawning gap between proved misbehaviour 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. Unfortunately, recourse to this procedure was not taken in the case at hand, may be, because of absence of legal sanction to such a procedure
- Since the 1st respondent has already demitted the office, we have stated as above so that it would form a precedent for future.
- The writ petition is accordingly disposed of.”