

SPECIAL REFERENCE NO. 1 OF 1983

[Y. V. CHANDRACHUD, C.J., R. S. PATHAK AND
SABYASACHI MUKHARJI, JJ.]

August 17, 1983

Constitution of India, 1950—Article 317(1)—Scope of—Allegation of assault on the Chairperson by a Member of Public Service Commission—Reference by President—Procedure to be followed—Supreme Court Rules—Order XXXVIII rule 2—Scope of.

The Chairperson of the Punjab Public Service Commission made a complaint to the President of India alleging that a certain member of the Commission had committed gross misbehaviour towards her by slapping her on her face in the presence of three other members of the Commission. In exercise of the power conferred by Article 317(1) of the Constitution, the President had referred for consideration of this Court the question whether on the ground of gross misbehaviour the member ought to be removed from the office of Member of the Public Service Commission.

Certain persons who claimed to have knowledge of the incident filed their affidavits. The Member's wife, who had also filed an affidavit, alleged that the then Chief Minister was not happy with her husband's appointment as a member of the Commission, that the Chairperson's husband, who was running classes for training students for the Public Service Commission examinations, wanted certain students of his to be favoured in these examinations and that when her husband refused to accede to the request he was falsely implicated in this incident.

It was contended on behalf of the Member that before making the reference the President (1) ought to have referred the case to a fact finding body to ascertain whether a *prima facie* case had been made out for obtaining the report of this Court on the question of alleged misbehaviour and (2) the function of this Court is limited to determining whether the person concerned was guilty of misconduct of such a nature as would require his removal from the office of Member of the Public Service Commission.

HELD : On the facts of this case, obtaining a preliminary opinion of yet another body would be needless duplication of work and avoidable waste of public time and money. The power of the President to make a reference to this Court under Article 317(1) is not subject to the condition precedent that he must first have the facts examined by some other body or authority. There is no justification for reading into the Article a provision which is not to be found in it, especially a provision in the nature of a condition precedent. The material before the President was of a kind and nature enough to justify his opinion that a *prima facie* case existed for an enquiry and report by this Court. [643 G-H, 644 A, C-D]

A (2) The enquiry which this Court is required to hold is not into the limited question whether the charge of misbehaviour was made out and whether the misbehaviour was of such a nature as to warrant his removal from office but is an enquiry into the facts themselves and facts also so as to enable this Court to pronounce whether the allegations levelled against the Chairman or Member were proved at all. The purpose of this Article is to ensure independence of the members and to give protection in the matter of their tenure. Certain dignitaries of the State like Judges of this Court and High Courts, the Comptroller and Auditor General and the Chief Election Commissioner can be removed from their offices only in accordance with the procedure prescribed in the relevant provisions of the Constitution. In the case of Members of the Public Service Commission a higher degree of protection is given by the elimination of political pressures in the matter of their removal. While in the case of these dignitaries removal on the ground of proved misbehaviour or incapacity depends upon the will of the Parliament, any allegation of misbehaviour made against Members of the Public Service Commission has to be examined by this Court on merits. It is impossible to accept that this Court in one case and the Parliament in the case of others are entrusted by the Constitution with the limited power of determining whether the facts found by some other body establish misbehaviour in one case and misbehaviour or incapacity in those others. Their function is to find upon facts and their duty is to pronounce whether the facts found by them establish the charge of misbehaviour or incapacity as the case may be.

[644 F-H, 645 A-D]

E (3) Their would be no unfair advantage to either side if the questions of fact are decided by this court straightaway. So long as the essential safeguards of a fair adjudication are observed no grievance can be made that the facts which establish the charge are found by the highest court and not by the lowest. [645 F-G]

F (4) (a) As regards procedure, Order XXXVIII rule (2) provides that while making an enquiry into the matter referred to it by the President, this court has power to summon witnesses and record their evidence. But having regard to the nature and gravity of the matter, it would not be conducive to justice to decide the reference on a consideration of affidavits only, because it would not be known at this stage whether the allegation that the member was falsely implicated in the incident is true or not. Those allegations cannot be adjudicated upon on a consideration of the affidavits only. Having regard to the important nature of the question, the parties whose interests are affected should be permitted to cross-examine the opposing witnesses. Again keeping in view the grave nature of the allegations and counter allegations it will be impossible to consider in isolation the evidence bearing directly on the alleged incident of slapping but the entire evidence would have to be taken into account for deciding whether the allegations against the member can be held to be proved. Therefore it is only fair that an opportunity should be given to the member to prove that the charge against him was false, inspired and motivated. [646 E-H]

(b) Order XXXVIII, Rule 2 of the Supreme Court Rules confers power on this Court to summon and examine witnesses but it does not enjoin that

the evidence must be recorded by this court itself. Although a provision like Order XLVII, Rule 6 which preserves the power of the court to act *ex debito justitiae* is not incorporated in order XXXVIII, it has to be read in the latter Order to enable this Court to pass proper orders in the interest of justice.

[648 E-H]

Considering the overwhelming commitments of this Court, the Court delegated the duty of recording evidence to the District Judge with a direction that he should record evidence treating the affidavits filed in this Court as examination in chief of the respective witnesses and (2) that the evidence recorded should be limited to cross-examination only of witnesses who had filed affidavits before this Court. [649 A-B]

ADVISORY JURISDICTION : Special Reference No. 1 of 1983.

(Reference under Article 317(1) of the Constitution of India)

G. L. Sanghi, S. K. Mehta, P. N. Puri and M. K. Dua for
Chairman, Punjab Service Commission.

Soli. J. Sorabjee, Bhagwant Singh, Advocate General Punjab,
S. K. Bagga for the State of Punjab.

F. S. Nariman, Anil B. Divan, Girish Chandra and Mrs. Sarla Chandra for Gopal Krishan Saini (Defaulting Member)

K. Parasaran, Attorney General, *Miss A. Subhashini* for Union of India.

The order of the Court was delivered by

CHANDRACHUD, C.J. : This is the first Reference of its kind made by the President of India to this Court under Article 317(1) of the Constitution. That Article reads thus :

“317. *Removal and suspension of a member of a Public Service Commission.*

(1). Subject to the provisions of clause (3) the Chairman or any other person of a Public Service Commission shall only be removed from his office by order of the President on the ground of misbehaviour after the Supreme Court, on reference being made to it by the President, has, on inquiry held in accordance with the procedure prescribed in that behalf under

A Article 145, reported that the Chairman or such other member, as the case may be, ought on any such ground to be removed."

B Clause (3) of Article 317, which confers power on the President to remove the Chairman or any other member of a Public Service Commission for reasons mentioned in sub-clauses (a), (b) and (c), is not relevant for our purpose.

C Not only is this Reference the first of its kind but the facts which have been referred to us for our consideration and report are, shockingly, the first of their kind. We hope they will be the last of their kind. The order of Reference recites those facts as follows :

D "On 24.11.1982 at about 1300 hours Shri Gopal Krishan Saini, Member, Punjab Public Service Commission, physically assaulted Smt. Santosh Chowdhary, Chairman, Punjab Public Service Commission inasmuch as he slapped her on the face in the presence of three other Members of the Punjab Public Service Commission, namely, S/Shri H. S. Deol, M. S. Brar and W.G. Lall and thereby committed gross misbehaviour."

E In exercise of the power conferred by Article 317(1) of the Constitution, the President has referred for consideration of this Court the question "as to whether Shri Gopal Krishan Saini, Member of the Punjab Public Service Commission, ought, on the ground of misbehaviour, to be removed from the office of the Member of the Commission."

F We issued notice of the Reference to the five members of the Commission, including the Chairperson Smt. Santosh Chowdhary and Shri Gopal Krishan Saini who is alleged to have assaulted her. All of them have filed their affidavits in these proceedings. Certain other persons who claim to have knowledge of the incident or of its alleged background have also filed their affidavits. Amongst them are : Dr. Vinod Gupta, Ujagar Singh, Avtar Singh, Hakam Singh and Dr. Rasewat. An affidavit has also been filed by Shri Saini's wife, the purport of which is that Shri Saini has been involved in this false incident since the Chief Minister of Punjab, Shri Darbara Singh, was not happy with his appointment as a Member of the

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Punjab Public Service Commission. It is also alleged that the Chairperson's husband was running classes for training students for the Public Service Commission Examinations, that he wanted certain students of his to be favoured in those examinations and that on the failure of Shri Saini to oblige him, his wife, the Chairperson, has involved Shri Saini into a false charge. The Chief Minister of Punjab has filed an affidavit denying the allegations made against him.

In pursuance of the notices issued by this Court, the Attorney-General of India and the Advocate-General of Punjab appeared in these proceedings.

Shri Nariman, who appears on behalf of Shri Saini whose conduct we are called upon to inquire into, contended that before making this Reference, the President should have obtained the opinion of a fact-finding body for his *prima facie* satisfaction that a case was made out for obtaining a report from this Court on the question of the alleged misbehaviour of Shri Saini. According to counsel, this Court cannot, through the medium of a Reference, be called upon to discharge functions which ordinarily fall within the jurisdiction of a trial Court, civil or criminal. The danger of such a procedure is said to be that if we hold that the incident is proved, Shri Saini will automatically be held guilty by a criminal Court of the charge of assault and he will have to suffer a decree for damages in a civil court. Counsel says that under Article 317(1), the limited function of this Court is or ought to be to determine whether the facts found upon by an independent fact-finding body show that the person concerned is guilty of misconduct and, secondly, whether the misconduct is of such a nature as to require his removal from the office of Member of the Public Service Commission.

We are unable to accept these submissions. The power of the President to make a reference to this Court under Article 317(1) is not subject to the condition precedent that he must first have the facts examined by some other body or authority. That Article provides that the Chairman or any other member of a Public Service Commission can only be removed from his office on the ground of misbehaviour after the Supreme Court on a Reference made to it by the President reports that the Chairman or such other person ought to be removed on any such ground. There is no justification for reading into the Article a provision which is plainly not to be

A found in it, especially a provision in the nature of a condition
precedent. Besides, the documents annexed to the Reference and
indeed the fact that those documents are so annexed would show
that the President was satisfied *prima facie* that the allegations made
B against the Member of the Public Service Commission require to be
inquired into by us. Annexed to the order of Reference are a reply
of Shri Saini to the allegations made against him and the statements
of the three Members of the Commission, Shri H. S. Deol, Shri M.
S. Brar and Shri W. G. Lall. These four statements are Annexures
C II, III, III-A and III-B respectively to the Reference. It is on the
basis of this material that the President has made the Reference.
The material is of a kind and nature enough to justify the President's
opinion that a *prima facie* case exists for an inquiry and report by
this Court. In these circumstances, obtaining a preliminary opinion
of yet another body would be needless duplication of work and
avoidable waste of public time and money.

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The argument that in a reference under article 317 (1) this
Court ought not to embark upon an examination of facts and that
its function is limited to determining whether the person concerned
is guilty of misbehaviour and whether the misbehaviour is of such a
E nature as to justify his removal is in direct opposition to the plain
words of article 317 (1). That article provides that, subject to the
provisions of clause (3), (i) the Chairman or any other member of a
Public Service Commission can be removed from his office only by
the order of the President on the ground of misbehaviour and (ii) the
F order of removal can be passed after the Supreme Court has on
inquiry reported to the President that the Chairman or the member
of a Public Service Commission is guilty of misbehaviour and ought
to be removed from his office on that ground. The inquiry which
this Court is required to hold is not into the limited question whether,
on the basis of facts found by the President, the charge of misbehaviour
G is made out and whether the misbehaviour is of such a nature
as to warrant the removal of the person from his office. The inquiry
contemplated by the article is into the facts themselves and facts also
so as to enable this Court to pronounce upon the question whether
the allegations made against the Chairman or member are proved at
H all. The purpose of article 317 (1) is to ensure the independence of
members of the Public Service Commissions and to give them protection
in the matter of their tenure. The Judges of the Supreme Court
can be removed from their office only in accordance with the
procedure prescribed by article 124 (4) which is made applicable to

the Judges of High Courts, the Comptroller and Auditor-General of India and the Chief Election Commissioner by articles 218, 148 and 324 (5) respectively. Members of Public Service Commissions are, in one sense, given a higher degree of protection by the elimination, as far as possible, of political pressures in the matter of their removal. Any allegation of misbehaviour made against them has to be examined by the Supreme Court on merits unlike the allegations made against those others whose removal on the ground of proved misbehaviour or incapacity depends upon the will of the Parliament. It is impossible to accept that the Supreme Court in one case and the Parliament in the case of those others are entrusted by the Constitution with the limited power of determining whether the facts found by some other body establish misbehaviour in one case and misbehaviour or incapacity in those others. Their function is to find upon facts and their duty is to pronounce whether the facts found by them establish the charge of misbehaviour or incapacity, as the case may be.

The apprehension expressed by the learned counsel that the finding recorded by this Court will automatically decide the fate of a prosecution or of a civil suit for damages is real but, that is as it ought to be. No grievance can legitimately be made that an examination and assessment of facts is made by this Court instead of being made by a Magistrate or a Munsif. If a full opportunity is given to the parties to prove and rebut the facts in issue as in a regular trial, it is an idle complaint that the evidence has been examined and found upon by the Supreme Court and not by a court of first instance. If, after giving a full opportunity to both the sides, the Supreme Court comes to the conclusion that the facts alleged are established, the conviction or a decree for damages may follow as a matter of course. But then, a contrary finding by this Court will equally seal the fate of those proceedings. There is, therefore, no unfair advantage to either side if the questions of fact are decided by this Court straightway. If the essential safeguards of a fair adjudication are observed, no grievance can be made that the facts which establish the charge of misbehaviour are found by the highest Court of the land and not by the lowest.

The question which then arises before us is as regards the procedure which this Court should adopt in a Reference made by the President under Article 317 (1) of the Constitution. That Article provides that an inquiry has to be held by this Court in accordance

A with the procedure prescribed in that behalf under Article 145. Article 145 provides, to the extent material, that subject to the provisions of any law made by Parliament, the Supreme Court may, from time to time, with the approval of the President, make rules for regulating the practice and procedure of the Court. Sub-clause (j) of Article 145 (1) confers power on this Court to make rules for regulating inquiries under Article 317 (1). Order XXXVIII of the Supreme Court Rules, 1966 contains rules regulating references under Article 317 (1). Rule 1 of Order XXXVIII mentions the persons to whom notice of the reference is required to be given. Rule 2, which is in point, provides that "the Court may summon such witnesses as it considers necessary." This rule shows that while making an inquiry into the matter referred to it by the President, this Court is entitled to summon witnesses, which obviously is for the purpose of recording their evidence. In other words, while dealing with a reference under Article 317(1), this Court has the power to summon witnesses and record their evidence.

D A procedural issue which was debated before us is whether we should pronounce our opinion on the allegations made against Shri Saini on the basis of the affidavits only or whether we should permit the parties to cross-examine persons who have filed their affidavits. Considering the nature and gravity of the matter referred to us, we are of the opinion that it will not be conducive to justice to decide the Reference on a consideration of the affidavits only. We do not know at this stage whether the allegation made by Shri Saini that he has been falsely involved into the particular incident by reason of certain other matters and at the instance of certain other persons, is true or not. But those allegations cannot be adjudicated upon on a consideration of the affidavits only. The credibility of witnesses who depose to facts is a matter which bears directly on the adjudication of those facts. And the best method of testing whether a witness is a person of credit is to subject him (or her) to cross-examination. The credit of a witness can be shaken (and, ironically, sometimes established) by cross-examining him and indeed, section 146(3) of the Evidence Act specifically permits the cross-examination of a witness in order "to shake his credit by injuring his character". Bearing in mind the impact of our findings on a future trial, civil or criminal, relating to the question referred to us, the repercussions of our findings on the parties concerned and the fact that the matter referred to us is one of public importance which transcends the immediate private interests of the parties who have made allegations and counter-allegations against one another, we are of the view that

parties whose interests are directly affected by these proceedings, that is to say the Chairperson Smt. Santosh Chowdhary and Shri Gopal Krishan Saini ought to be permitted to cross-examine opposing witnesses who have filed their affidavits.

There was a sharp difference between the rival views submitted before us as to the nature and scope of the evidence which we should allow the parties to lead. It was contended by Shri Sorabjee who appears for the Government of Punjab and by Shri G.L. Sanghi who appears for the Chairperson that evidence should be allowed to be led only on the question whether the incident of slapping took place as alleged and not on any other matter. It was urged by these learned counsel that we are only concerned to determine whether Shri Saini slapped the Chairperson and not with the events antecedent to the assault or which are said to furnish the motive for the alleged false implication of Shri Saini. On the other hand, it was contended by Shri Nariman that the case of his client is that he has been falsely implicated into the charge of assault because he had incurred the wrath of the Chief Minister of Punjab and the hostility of the Chairperson's husband and that, it would be impossible for him to prove his case unless he is allowed to cross-examine witnesses on those aspects of the matter. Counsel contends that if he could satisfy us that there was a conspiracy to involve his client falsely or that there were reasons for so involving him, we will be loathe to hold that the alleged incident is proved. Shri Nariman's submission must be accepted in the circumstances of the case. It will be impossible to consider in isolation the evidence bearing directly on the incident which is alleged to have taken place on November 22, 1982. The entire evidence, admissible and relevant, shall have to be taken into account for the purpose of deciding whether the allegation against Shri Saini can be held to be proved. We are not pronouncing at a stage upon the admissibility or relevance of any particular piece of evidence, which shall have to be done after the entire evidence is before us. All that we do now is to say that we cannot prevent Shri Saini, against whom a grave charge has been made, from proving that the charge is false and motivated. One of the questions which is bound to arise in this matter, as it arises in matters of similar nature, is as to why the complainant should make a false allegation that she was slapped, courting trouble and involving her own status and respectability. The answer to that question has to be furnished by the person who is called upon to meet the allegation that he slapped her. Answers on questions of fact cannot be made in courts

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A of law in a vacuum. There has to be evidence to justify those answers. Therefore, it is only fair that an opportunity should be given to Shri Saini to prove his case that the charge against him is false, inspired and motivated. We only hope that this opportunity will not be exploited by Shri Saini to fight a political battle, against the Chief Minister or to engage in a duel with the Chairperson's husband. In the ultimate analysis, after the dust raised by these accusations and counter-accusations has settled down, the fundamental question which this Court will have to answer is : Did Shri Saini slap the Chairperson or not? She says he did. He says he did not. And on the contrary, according to him, it is she who raised her hand to beat him when he tried to ward off the blow. C He says that this occasion was exploited by interested parties to involve him in a false charge, out of personal malice and hostility. Both the accuser and the accused must have an equal opportunity to prove their respective cases. It must also be remembered that Article 317 was enacted in order to give protection to the members D of the Public Service Commissions in regard to their removal from office and not as a disability.

E Having seen that witnesses shall have to be summoned and allowed to be cross-examined by the opposite party the next question which we have to decide is whether we should have the evidence recorded in our presence or whether we can and should appoint some responsible delegate for doing so. Order XXXVIII, Rule 2 of the Supreme Court Rules, 1966 provided that this Court may summon such witnesses as it considers necessary. This provision confers the requisite power on this Court to summon and examine witnesses, but F nothing contained therein can be read to mean that after deciding which witnesses should be summoned and examined, evidence must be recorded by this Court itself. Order XLVII, Rule 6 of the same Rules provides that nothing contained in the Rules "shall be deemed to limit or otherwise affect the inherent powers of the Court to make G such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court. This provision, like its counterpart in statutes like the Code of Civil Procedure (Section 151) or the Code of Criminal Procedure (Section 482), does not create or confer any new power but preserves the power of the Court to act *ex debito H justitiae*. Though a provision like Rule 6 of Order XLVII of the Supreme Court Rules is not specifically incorporated in Order XXXVIII of those Rules, it, shall have to be read in the latter Order in order to enable this Court to pass proper orders in the interest of

justice. Considering the overwhelming commitments of this Court for the time being (and in the foreseeable future), it is regrettably inexpedient that the evidence should be recorded by this Court itself. No useful purpose will be served by expending our own time in recording the evidence of various witnesses except for the advantage of seeing and hearing the witnesses. The balance of convenience requires that we should forego that advantage and delegate the duty of recording evidence. Accordingly, we direct that evidence in this Reference will be recorded by a learned Additional District and Sessions Judge, Delhi, who will be nominated by the learned District and Sessions Judge, Delhi. The nomination may be made before August 22, 1983.

We cannot confer any power on the learned Judge so nominated for recording evidence, to decide on the admissibility or relevance of any particular piece of evidence. The learned Judge will, therefore, record the evidence which the parties lead before him, within the constraints of the following guidelines :

(1) The affidavits filed in this Court will be treated as the examination-in-chief of the respective witnesses.

(2) The evidence to be recorded by the learned Judge will be limited to the cross-examination of witnesses who have filed affidavits before us. In other words, no person who has not filed an affidavit in this Court will be examined or cross-examined as a witness, except with the leave of this Court.

(3) Witnesses who have filed affidavits in this Court may be summoned or requested by the learned Judge to attend his Court for the purpose of cross-examination. The proceedings will normally be held in Delhi. Evidence may, however, be recorded at any other place if the learned Judge considers it necessary or convenient.

The mere fact that the evidence of any particular witness is recorded by the learned Judge will not conclude the issue as regards the admissibility or relevance of that evidence. All questions regarding admissibility and relevance of the evidence so recorded will be decided by this Court during the hearing of the Reference.

We hope that all parties concerned will take care to avoid putting frivolous or scandalous questions to witnesses and will afford

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A the necessary co-operation to the learned Judge for an expeditious termination of the proceedings before him.

B The parties shall appear before the learned Additional District and Sessions Judge nominated by the learned District and Sessions Judge, Delhi, on Monday, September 5, 1983, at 11.00 a.m., for obtaining further directions in the matter. The recording of evidence will commence on Monday, September 12, 1983 and shall proceed from day to day until the entire evidence is over. We expect that the recording of evidence will be over by September 30, 1983. In case it is not over by that date, the learned Judge may write to the Registrar of the Supreme Court for extension of time. The evidence will be transmitted to the Registrar (Judicial) of this Court immediately after the entire evidence is recorded.

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P.B.R.