

COMMON CAUSE

v.

UNION OF INDIA AND ORS.
(Writ Petition (C) No. 35 of 2012)

MAY 10, 2012

[DR. B.S. CHAUHAN AND JAGDISH SINGH KHEHAR,
JJ.]

Protection of Human Rights Act, 1993: s.5(2) – Procedure for removal of a Chairperson/Member of the Commission – Held: If a decision is to be taken to hold an enquiry against an incumbent Chairperson/Member of the Commission, the President of India would require the advice of the Council of Ministers – It is only thereafter, if a prima facie case is found to be made out, that the President of India on being satisfied, may require the Supreme Court to initiate an enquiry into the allegations u/s.5(2) of the Act – In the instant writ petition, a series of allegations were levelled against the Chairman of the Commission, in the communication addressed by Campaign for Judicial Accountability and Reforms, to the President of India and Prime Minister of India, on 4.4.2011 – Prayer was made in writ petition for the issuance of a writ in the nature of Mandamus, requiring the President of India to make a reference to the Supreme Court u/s.5(2) of the Act, for holding an enquiry against the Chairman of the Commission – The prayer made at the hands of the petitioner was not accepted since the first step contemplated u/s.5(2) of the Act is the satisfaction of the President of India – It is only upon the satisfaction of the President based on advice of the Council of Ministers that a reference can be made to the Supreme Court for holding an enquiry – The pleadings in the writ petition did not reveal, whether or not any deliberations were conducted either by the President of India or by the Council

A *of Ministers in response to the communication dated 4.4.2011 – In the peculiar facts, the instant writ petition is disposed of by requesting the competent authority to take a decision on the communication dated 4.4.2011 – If the allegations, in the said determination, are found to be*
 B *unworthy of any further action, petitioner to be informed accordingly – Alternatively, the President of India, based on the advice of the Council of Ministers, may proceed with the matter in accordance with the mandate of s.5(2) of the Act.*

C **The instant writ petition was filed by common cause wherein extensive allegations were made against the Chairman of the National Human Rights Commission (respondent no.3). The grievance of the petitioner was that communication dated 4.4.2011 was addressed by Campaign for Judicial Accountability and Reforms, to the**
 D **President of India, requesting her to make a reference to the Supreme Court for holding an enquiry, to probe the allegations leveled against the Chairman of the Commission under Section 5 of the Protection of Human Rights Act, 1993. The petitioner did not receive any**
 E **response to communication dated 4.4.2011 nor reference was made by the President to the Supreme Court under Section 5 of the 1993 Act.**

Disposing of the writ petition, the Court

F **HELD: 1. A perusal of Section 5(2) of the Protection of Human Rights Act, 1993 reveals the procedure for removal of a Chairperson/Member of the Commission. It is apparent from the procedure contemplated under Section 5(2) of the 1993 Act, that on being satisfied, the**
 G **President of India shall require an enquiry to be conducted by the Supreme Court. It is also apparent that the President of India, while discharging her duties, is to be guided by the Council of Ministers. Accordingly, in terms of the mandate of Section 5(2) of the 1993 Act, if a**

decision is to be taken to hold an enquiry against an incumbent Chairperson/Member of the Commission, the President of India would require the advice of the Council of Ministers. It is only thereafter, if a prima facie case is found to be made out, that the President of India on being satisfied, may require the Supreme Court to initiate an enquiry into the allegations, under Section 5(2) of the 1993 Act. [Para 4] [527-B-E]

2. A series of allegations were levelled against the Chairman of the Commission, in the communication addressed by Campaign for Judicial Accountability and Reforms, to the President of India and Prime Minister of India, on 4.4.2011. These allegations ought to have been forwarded to the Supreme Court, for an enquiry into the matter. The same having not been done, a prayer was made by the petitioner, for the issuance of a writ in the nature of Mandamus, requiring the President of India to make a reference to the Supreme Court under Section 5(2) of the 1993 Act, for holding an enquiry against respondent No. 3, i.e., the Chairman of the Commission. The prayer made at the hands of the petitioner cannot be accepted for the simple reason that the first step contemplated under Section 5(2) of the 1993 Act is the satisfaction of the President of India. It is only upon the satisfaction of the President, that a reference can be made to the Supreme Court for holding an enquiry. The satisfaction of the President of India is based on the advice of the Council of Ministers. The pleadings in the writ petition did not reveal, whether or not any deliberations were conducted either by the President of India or by the Council of Ministers in response to the communication dated 4.4.2011 (addressed to the President of India, by the Campaign for Judicial Accountability and Reforms). In the peculiar facts, the instant writ petition is disposed of by requesting the competent authority to take a decision on the

A communication dated 4.4.2011. If the allegations, in the said determination, are found to be unworthy of any further action, the petitioner shall be informed accordingly. Alternatively, the President of India, based on the advice of the Council of Ministers, may proceed with the matter in accordance with the mandate of Section 5(2) of the 1993 Act. [Paras 5, 6, 7] [527-E-G; 528-A-G]

Manohar Lal Sharma Vs. Union of India W.P. (C) No. 60 of 2011 decided on 7.5.2012 – relied on.

CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil) No. 35 of 2012.

Under Article 32 of the Constitution of India.

Prashant Bhushan for the Petitioner.

Amarjit Singh Bedi, Bina Madhavan for the Respondents.

The Judgment of the Court was delivered by

JAGDISH SINGH KHEHAR, J. 1. Through the instant Writ Petition filed by Common Cause invoking the jurisdiction of this Court under Article 32 of the Constitution of India, it is brought out, that there are extensive allegations against the present Chairman of the National Human Rights Commission (hereinafter referred to as the “Commission”), which require to be enquired into. It is submitted, that under the provisions of the Protection of Human Rights Act, 1993 (hereinafter referred to as the “1993 Act”), the authority to initiate an enquiry into the matter, is vested with the President of India. It is accordingly pointed out, that a communication dated 4.4.2011 was addressed by Campaign for Judicial Accountability and Reforms, to the President of India, requesting her to make a reference to the Supreme Court for holding an enquiry, to probe the allegations levelled against Mr. Justice K.G. Balakrishnan, ex-Chief Justice of India, under Section 5 of the 1993 Act.

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2. It is pointed out, that even though a period of more than one year has lapsed since the aforesaid communication was addressed to the President of India and the Prime Minister of India, the petitioner has neither received a response to the communication dated 4.4.2011, nor has a reference been made by the President of India to the Supreme Court under Section 5 of the 1993 Act.

3. During the course of hearing, learned counsel for the petitioner invited our attention to a newspaper report, which had appeared in the Economic Times dated 22.6.2011, containing allegations against three relatives of Mr. Justice K.G. Balakrishnan. It is submitted, that two sons-in-law and a brother of the present incumbent of the Office of Chairman of the Commission, were blamed for having assets beyond their known sources of income. Reference was also made to the communication dated 4.4.2011 addressed by the Campaign for Judicial Accountability and Reforms to the President of India, where allegations were levelled against the Chairman of the Commission under five heads. Firstly, for owning benami properties in the names of his daughters, sons-in-law and brother ; secondly, for getting allotted benami properties from the Chief Minister of Tamil Nadu in the name of his former-aide M. Kannabiran ; thirdly, for approving evasive and false replies to an application under the Right to Information Act filed by Shri Subhash Chandra Agarwal, relating to declaration of assets by Judges of this Court ; fourthly, resisting attempts to stop the elevation of Justice P.D. Dinakaran to the Supreme Court of India, despite allegations of land-grab, encroachment and possessing assets beyond his known sources of income ; and lastly, suppressing a letter written by a Judge of the High Court of Madras, alleging that a former Union Minister (A. Raja) had tried to interfere in his judicial functioning. Based on the aforesaid allegations, it was sought to be concluded, that Justice K.G. Balakrishnan, the present incumbent of the Office of Chairman of the Commission, has been guilty of several acts of serious misbehaviour. It was accordingly the claim of the

A petitioner, that a reference be made for an enquiry into the aforesaid alleged acts of misbehaviour at the hands of Justice K.G. Balakrishnan, to the Supreme Court under Section 5 of the 1993 Act.

B 4. Section 5 of the 1993 Act is being extracted hereinbelow:-

“5. Resignation and removal of Chairperson and Members

C (1) The Chairperson or any Member may, by notice in writing under his hand addressed to the President of India, resign his office.

D (2) Subject to the provisions of sub-section (3), the Chairperson or any Member shall only be removed from his office by order of the President of India on the ground of proved misbehaviour or incapacity 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 by the Supreme Court, reported that the Chairperson or the Member, as the case may be, ought on any such ground to be removed.

E (3) Notwithstanding anything in sub-section (2), the President, may, by order, remove from office the Chairperson or any other Member if the Chairperson or such other Member, as the case may be, -

F (a) is adjudged an insolvent; or

G (b) engages during his term of office in any paid employment out side the duties of his office:
or

H (c) is unfit to continue in office by reason of infirmity of mind or body; or

- (d) is of unsound mind and stands so declared by a competent court; or A
- (e) is convicted and sentenced to imprisonment for an offence which in the opinion of the President involves moral turpitude.” B

A perusal of Section 5(2) reveals the procedure for removal of a Chairperson/Member of the Commission. It is apparent from the procedure contemplated under Section 5(2) of the 1993 Act, that on being satisfied, the President of India shall require an enquiry to be conducted by the Supreme Court. It is also apparent that the President of India, while discharging her duties, is to be guided by the Council of Ministers. Accordingly, in terms of the mandate of Section 5(2) of the 1993 Act, if a decision is to be taken to hold an enquiry against an incumbent Chairperson/Member of the Commission, the President of India would require the advice of the Council of Ministers. It is only thereafter, if a prima facie case is found to be made out, that the President of India on being satisfied, may require the Supreme Court to initiate an enquiry into the allegations, under Section 5(2) of the 1993 Act. C D E

5. The facts narrated in the pleadings of the instant case and the submissions made by the learned counsel appearing on behalf of the petitioner reveal, that a series of allegations have been levelled against the Chairman of the Commission, in the communication addressed by Campaign for Judicial Accountability and Reforms, to the President of India and Prime Minister of India, on 4.4.2011. These allegations ought to have been forwarded to the Supreme Court, for an enquiry into the matter. The same having not been done, a prayer has been made by the petitioner, for the issuance of a writ in the nature of Mandamus, requiring the President of India to make a reference to this Court under Section 5(2) of the 1993 Act, for holding an enquiry against respondent No. 3, i.e., the present Chairman of the Commission. F G

6. We have given our thoughtful consideration to the H

A solitary prayer made in the instant Writ Petition. It is not possible for us to accept the prayer made at the hands of the petitioner, for the simple reason that the first step contemplated under Section 5(2) of the 1993 Act is the satisfaction of the President of India. It is only upon the satisfaction of the President, that a reference can be made to the Supreme Court for holding an enquiry. This Court had an occasion to deal with a similar controversy based on similar allegations against respondent No. 3 in *Manohar Lal Sharma Vs. Union of India* [W.P. (C) No. 60 of 2011 decided on 7.5.2012], wherein this Court, while disposing of the Writ Petition, required the petitioner to approach the competent authority under Section 5(2) of the 1993 Act. As noticed above, the satisfaction of the President of India is based on the advice of the Council of Ministers. The pleadings in the Writ Petition do not reveal, whether or not any deliberations have been conducted either by the President of India or by the Council of Ministers in response to the communication dated 4.4.2011 (addressed to the President of India, by the Campaign for Judicial Accountability and Reforms). It is also the submission of the learned counsel for the petitioner, that the petitioner has not been informed about the outcome of the communication dated 4.4.2011.

7. In the peculiar facts noticed hereinabove, we are satisfied, that the instant Writ Petition deserves to be disposed of by requesting the competent authority to take a decision on the communication dated 4.4.2011 (addressed by the Campaign for Judicial Accountability and Reforms, to the President of India). If the allegations, in the aforesaid determination, are found to be unworthy of any further action, the petitioner shall be informed accordingly. Alternatively, the President of India, based on the advice of the Council of Ministers, may proceed with the matter in accordance with the mandate of Section 5(2) of the 1993 Act.

8. Disposed of in the abovesaid terms.

D.G.

Writ Petition disposed of.

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