

Lily Thomas (Ms), Advocate vs Speaker, Lok Sabha And Ors. on 24 August, 1993

Equivalent citations: JT1993(4)SC646, 1993(3)SCALE543, (1993)4SCC234, [1993]SUPP1SCR791, 1993 AIR SCW 2948, 1993 (4) SCC 234, 1993 UJ(SC) 2 584, (1993) 2 CURLJ(CCR) 475, (1993) 3 SCJ 550, (1993) 3 CURCC 192, (1993) 4 JT 646 (SC)

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Bench: R.M. Sahai, N.P. Singh

JUDGMENT

R. M. Sahai, J.

1. 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 nonfunctional 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 of 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 in 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.

2. 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 a 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 and Ors.*, the Constitution Bench after detailed discussions of analogous provisions 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 Parliament. 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 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 a member of a legislative or deliberative body, or of a constituency or a body of qualified electors, in 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', 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.

3. Article 124(4) does not exclude neutrality or abstaining from voting. 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 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 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. Shukla 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 'NAYES' 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.

4. Consequently, the petition fails and is dismissed.