Justice P.D. Dinakaran vs Hon'Ble Judges Inquiry Committee & Ors on 5 July, 2011

Equivalent citations: AIR 2011 SUPREME COURT 3711, 2011 AIR SCW 5500, (2011) 2 ORISSA LR 445, (2011) 3 SCT 704, 2011 (8) SCC 380, (2011) 6 SCALE 797, (2011) 7 SERVLR 697, (2012) 113 CUT LT 215, (2011) 8 MAD LJ 331, (2011) 5 ALLMR 408 (SC), 2011 (3) KLT SN 62 (SC)

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Bench: Chandramauli Kumar Prasad, G.S. Singhvi

REPOR

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO.217 OF 2011

Justice P.D. Dinakaran ... Petitioner

Versus

Hon'ble Judges Inquiry Committee and others ... Respondents

J U D G M E N T

G.S. Singhvi, J.

1. Although, the prayers made in this petition filed under Article 32 of the Constitution are for quashing order dated 24.4.2011 passed by the Committee constituted by the Chairman of the Council of States (Rajya Sabha) under Section 3(2) of the Judges (Inquiry) Act, 1968 (for short, "the Act") and for grant of a declaration that the proceedings conducted by the Committee on 24.4.2011 are null and void, the tenor of the grounds on which these prayers are founded shows that the

petitioner is also aggrieved by the inclusion of respondent No.3-Shri P.P. Rao, Senior Advocate, Supreme Court of India in the Committee under Section 3(2)(c) of the Act.

2. Fifty members of the Rajya Sabha submitted a notice of motion for presenting an address to the President of India for removal of the petitioner, who was then posted as Chief Justice of the Karnataka High Court, under Article 217 read with Article 124(4) of the Constitution of India. The notice enumerated the acts of misbehaviour allegedly committed by the petitioner and was accompanied by an explanatory note and documents in support of the allegations. After the motion was admitted, the Chairman of the Rajya Sabha (hereinafter referred to as, "the Chairman") constituted a Committee comprising Mr. Justice V.S. Sirpurkar, Judge, Supreme Court of India, Mr. Justice A.R. Dave, the then Chief Justice of Andhra Pradesh High Court and respondent No.3.

3. Immediately after issue of notification dated 15.1.2010 under Section 3(2) of the Act, the newspapers carried reports suggesting that there was an objection to the inclusion of respondent No.3 in the Committee on the ground that he had given legal opinion to the petitioner in December, 2009. On reading the newspaper reports, respondent No.3 sent letter dated 19.1.2010 to the Chairman with the request that he may be relieved from the Committee. Paragraph 2 of that letter reads as under:

> "Although, there is no conflict of duty and interest, as I did not render any professional service to him, there is a demand from certain quarters for my recusal which you might have noticed in today's Hindustan Times. I am sure you will appreciate that justice should not only be done but also seen to be done. Even though I have no official communication as yet about my nomination, it will not be proper for me to function as a member of the Committee in the fact of such objection. I request you to kindly relieve me forthwith and nominate another jurist in my place and oblige."

4. After due consideration, the Chairman declined to accept the request of respondent No.3 and asked him to continue as member of the Committee. Thereupon, respondent No.3 sent letter dated 21.1.2010 and agreed to accept the assignment. On that very day, Convenor of the Campaign for Judicial Accountability and Reform sent a letter to the Vice-President wherein a demand was made in the garb of making suggestion that Mr. Justice V.S. Sirpurkar should recuse from the Committee because he had association with the petitioner as a Judge of the Madras High Court from 1997 to 2003. Similar suggestion-cum-demand was made qua respondent No.3 by stating that the petitioner had consulted respondent No.3 and the latter had advised him to get a commission of inquiry appointed to go into the charges.

5. On being instructed by the Chairman, the Secretary General of the Rajya Sabha forwarded a copy of the aforesaid letter to respondent No.3. In his response dated 27.1.2010, respondent No.3 detailed the background in which the petitioner had met him on 6.12.2009 and what transpired between them. The relevant paragraphs of that letter read as under:

"I would like to place on record as to why Chief Justice Dinakaran met me at my residence with prior appointment on Sunday, the 6th December, 2009 at 02:30 p.m. On Saturday, 28 Nov '09, there was a day-long National Seminar organized by The Bar Association of India under the Presidentship of Shri F.S. Nariman to discuss the problems of the Judiciary, in which the Hon'ble Law Minister also participated briefly in the inaugural session. I am one of the Vice-Presidents. In the course of my speech, I demanded that the Collegium should not proceed further with the recommendation to bring Chief Justice P.D. Dinakaran to the Supreme Court and there should be a public inquiry in which Chief Justice Dinkaran should clear himself of the charges levelled against by senior members of the Bar and during the inquiry, he should step down from his office and remain on leave. Many eminent members of the Bar including two former Attorney Generals for India namely, Shri Soli J. Sorabjee and Shri Ashok Desai, a former President of International Bar Association namely Shri RKP Shankar Dass and a former President of Law Asia namely, Shri Anil Divan, who participated in the seminar expressed the same view. Finally, on the request of the President of Bar Association of India, I drafted the Resolution which was touched up by him before it was passed unanimously by the members present. The speeches made at the seminar, including mine, were reported in the media. In the following week, Chief Justice Dinakaran visited Delhi, presumably to meet the Chief Justice of India, members of the Collegium and others. While in Delhi, he telephoned to me saying that he was surprised that I too believed that he was guilty of the charges levelled against him and he would like to meet me personally. When the Chief Justice of a High Court seeks appointment, it would be improper for any member of the legal profession to refuse it. When he met me on December 06, 2009 I told him that when serious allegations had been made against him by senior members of the Bar practicing at Chennai, Bangalore and Delhi, it was proper that there should be a public inquiry. When he said that he was totally innocent and he could convince me about it, I told him politely that he has to convince those who made the allegations on some basis and that will be possible only in a public inquiry. It was then I suggested that if he was innocent, he should himself invite an inquiry under the Commissions of Inquiry Act, 1952 and offer to proceed on leave during the Inquiry. There was neither consultation on the merits of the charges nor any opinion sought or given. He did not seek my professional services for his case. The matter ended there. What I told him in private when he met me at my residence was nothing but what I had earlier demanded in public at the seminar. There is absolutely no question of conflict of interest and duty in such a case. When the Hon'ble Chairman of Rajya Sabha, after due consideration of my offer to quit, requested me to continue, I accepted the request most respectfully as it is a call to public duty from no less a person than the Vice-President of India, which I shall not shirk."

6. On 12.5.2010, the petitioner suo moto sent a letter to the Vice- President of India and Chairman, Rajya Sabha stating therein that through print and electronic media he had come to know about constitution of the Committee under Section 3(2) of the Act. The petitioner claimed that the allegations levelled against him were false and baseless. He expressed anguish on being prevented

from performing his judicial work and prayed that the inquiry initiated against him may be completed expeditiously and his grievance be redressed at the earliest. For the sake of reference, letter dated 12.5.2010 is reproduced below:

" 12th May, 2010

The Hon'ble Vice President of India

and Chairman, Rajya Sabha

Parliament

New Delhi

Your Excellency,

May I take this opportunity to present this supplication for kind consideration of Your Excellency.

2. Even though I have learnt through print and electronic media that an impeachment motion has been moved against me under Article 217 read with 124(4) of the Constitution of India before the Rajya Sabha by 75 Hon'ble Members of Parliament, as on date, I have not received any official communication whatsoever in this regard till date.

3. I have also learnt through print and electronic media that a Committee, as contemplated under Section 3(b) of The Judges (Inquiry) Act, 1968, has been constituted by Your Excellency consisting of Hon'ble Mr. Justice V.S. Sirpurkar, Judge, Supreme Court of India; Hon'ble Mr. Justice A.R. Dave, the then Chief Justice, Andhra Pradesh High Court and Mr. P.P. Rao, Senior Advocate, Jurist, in January, 2010, but till date I have not officially heard anything in this connection to enable me to explain my case. Now that Mr. Justice A.R. Dave is elevated to the Supreme Court of India, the Committee requires to be reconstituted.

4. In the meanwhile, the print and electronic media had given wild publicity about the allegations made against me, causing irreparable damage to me and to my family personally and to the constitutional position I am holding. All the allegations are made with an ulterior motive to stall my elevation to the Supreme Court, when the Hon'ble collegium of the Supreme Court recommended my name for elevating me to Supreme Court.

5. It appears that Hon'ble Rajya Sabha Members have been misled by the reports of the District Collector, Thiruvallur, State of Tamil Nadu dated 8th, 10th and 15th October, 2009 stating that myself and my wife have encroached 199.53 acres of lands at Kaverirajapuram, Tiruttani Taluk, Thiruvallur District, State of Tamil Nadu. As the said reports of the District Collector were specifically denied by me as baseless, the matter was referred to a Committee under the Chairmanship of Major General (Dr.) Siva Kumar, Survey of India, Department of Science and Technology, who, ultimately on 15th February, 2010, produced a survey map to my wife, Dr. K.M.

Vinodhini Dinakaran, holding that there is no encroachment of any government/public lands either by me or by my wife.

6. All the allegations leveled against me are false and baseless.

7. Myself and my family members are humiliated and put into great hardship by the vested interest persons; and I have been prevented to discharge my obligations under the constitution to perform the judicial work, pending enquiry by the Committee. But, the enquiry is yet to commence. Your Excellency may kindly appreciate that the enquiry initiated against me cannot be an endless wait.

Having patiently waited all these days for an opportunity to explain my case that the allegations are baseless and there is no material and merit whatsoever, I earnestly request Your Excellency to do the needful, so that, my genuine grievance may kindly be redressed at the earliest and justice be rendered to me expeditiously.

With kind regards, Yours sincerely, Sd/-

[P.D. Dinakaran]"

(emphasis supplied)

7. In the meanwhile, Mr. Justice A.R. Dave, Chief Justice of the Andhra Pradesh High Court, was transferred to the Bombay High Court and was then elevated as Judge of this Court and in his place Mr. Justice J.S. Khehar, Chief Justice of the Uttarakhand High Court was included in the Committee. In September, 2010, Mr. Justice Aftab Alam, Judge, Supreme Court of India was appointed as Presiding Officer because Mr. Justice V.S. Sirpurkar recused from the Committee.

8. After about two months of the aforesaid development, the petitioner's wife, Dr. (Mrs.) K.M. Vinodhini Dinakaran, sent letter dated 27.11.2010 to the Presiding Officer and the members of the Committee with the request that investigation into the allegations levelled against her husband should be got done through unbiased officials. This request was made in the context of some inquiry having been made by Mr. Govindswamy, Village Administrative Officer, Kaverirajapuram Village, Tiruttani Taluk and Mr. Veeraraghavan, former Tahasildar Tiruttani. She claimed that both the officials were in collusion with the then District Collector, Mr. Palani Kumar IAS, who was inimical to the petitioner. She requested that the investigating agency should not engage Mr. Govindswamy and Mr. Veeraraghavan because they had already acted with mala fides and bias against her family.

9. After preliminary scrutiny of the material placed before it, which included documents summoned from Government departments and agencies/instrumentalities of the State, the Committee issued notice dated 16.3.2011, which was served upon the petitioner on 23.3.2011, requiring him to appear on

9.4.2011 to answer the charges. The notice was accompanied by a statement of charges and lists of the documents and witnesses.

10. Upon receiving the notice, the petitioner submitted representation dated 8.4.2011 to the Vice-President of India and the Chairman, Rajya Sabha with the prayer that the order admitting notice of motion may be withdrawn, the order constituting the Inquiry Committee be rescinded and notice issued by the Committee may be annulled. In that representation, the petitioner, for the first time, raised an objection against the inclusion of respondent No.3 in the Committee by alleging that the latter had already expressed views in the matter and declared him guilty of certain charges. The petitioner claimed that respondent No.3 had led a delegation of the advocates to meet the then Chief Justice of India and was a signatory to the representation made by the senior advocates against his elevation to the Supreme Court. The petitioner further claimed that he felt agitated by the attitude of respondent No.3 because earlier the said respondent had not only appreciated his work but even called upon him to communicate his appreciation and also sent congratulatory message on his name being cleared for elevation to the Supreme Court. The petitioner also stated that he along with his wife and one K. Venkatasubbaraju met respondent No.3 at his residence and, during the meeting, respondent No.3 admitted that he was misled by certain vested interest in signing the representation. Paragraphs 6, 7 and 8 of the letter written by the petitioner are reproduced below:

"6. Once I came to know that Shri P.P. Rao has led the delegation against me demanding that I should not be elevated, I was agitated by this attitude of Shri P.P. Rao. Earlier Shri P.P. Rao had always appreciated my work on the bench and even called on me to communicate the same. When I was a judge of the High Court of Judicature at Madras, Shri P.P. Rao called on me and appreciated my work as Judge. He also paid encomiums for my bold and independent approach. Soon after my name was considered and cleared for elevation to the Supreme Court of India Shri P.P. Rao congratulated me in writing. Therefore, I I was aghast when I learnt about his opposition to my elevation. Shri K. Venkatasubbaraju, an Advocate who is a common friend of both of us spoke to Shri P.P. Rao and arranged for a meeting between us. Accordingly, I along with Shri K. Venkatasubbaraju accompanied by my wife called on Shri P.P. Rao at his residence and confronted him with the newspaper reports. Shri P.P. Rao admitted that he was misled by certain vested interests in signing the petition against me he even went to the extent of saying that he was forced to sign the petition as an office bearer of the Association. In the light of the said explanation I though it fit to leave the matter at that.

7. In the meanwhile I was shocked to see Shri P.P. Rao's name included in the Committee constituted under the Chairmanship of Hon'ble Mr. Justice V.S. Sirpurkar. Even before I could react to that the very same vested interests, who are instrumental in engineering false allegations against me, opposed the constitution of the said Committee. They took specific objection to the inclusion of Shri P.P. Rao in

> the Committee while objecting to the appointment of the Chairman. It was on such opposition that Hon'ble Mr. Justice V.S. Sirpurkar resigned as the Chairman of the Committee. Following suit, I expected, keeping in mind Shri P.P. Rao's standing and reputation, that Shri P.P. Rao would also quit the Committee.
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> 8. In this background, it is clear that Shri P.P. Rao has already declared me guilty of certain charges on the basis of which he opposed my elevation to Apex Court tooth and nail. It is a travesty of justice that the Judges Inquiry Committee has been so constituted with the same Shri P.P. Rao as a sitting member of the said Committee. This is opposed to all principles of justice and rule of law. It is, in these circumstances, this petition is presented on the following amongst the other grounds."

(emphasis supplied)

11. On the next day, i.e., 9.4.2011, the petitioner sent a letter to the Presiding Officer of the Committee enclosing a copy of the representation submitted to the Chairman and requested that decision on the same be awaited. On 20.4.2011, the petitioner made an application to the Committee and raised several objections against notice dated 16.3.2011 including the one that respondent No.3 was biased against him. After two days, respondent No.3 sent letter dated 22.4.2011 to the Presiding Officer of the Committee and reiterated all that he had said in letter dated 27.1.2010 but, at the same time, respondent No.3 specifically denied that he had pronounced upon the guilt of the petitioner. He also denied that the petitioner had consulted him or that any opinion was sought and given. Respondent No.3 acknowledged that when news appeared about the petitioner's name having been cleared for elevation to the Supreme Court, he had congratulated him vide e-mail dated 30.8.2009, referred to letter dated 19.1.2010 addressed to the Chairman and indicated that it was his duty to recuse from the membership of the Committee once again. Respondent No.3 prepared a similar letter for being sent to the Chairman, but on being advised by the Presiding Officer of the Committee, he held back the same.

12. After considering the objections of the petitioner, the Committee (respondent No.3 did not take part in the proceedings) passed detailed order dated 24.4.2011, the relevant portions of which are extracted below:

> "According to the applicant, earlier when his name was recommended for appointment as a Judge of the Supreme Court, Mr. P.P. Rao had led a delegation of lawyers to the then Chief Justice of India to hand over a petition opposing his elevation to the Supreme Court. He was one of the signatories to the representation handed over to the then Chief Justice of India urging him not to elevate the applicant as a Judge of the Supreme Court. He was one of the speakers in a seminar organized by the Bar Council of India urging the authorities against the elevation of the applicant as a Judge of the Supreme Court. Mr. Rao was one of the leading personalities spearheading the campaign against his elevation to the Supreme Court. On those allegations, the applicant states that he does not expect a just and fair

inquiry with Mr. P.P. Rao, being a member of the Committee.

Mr. P.P. Rao has the distinction that his presence on the Committee has been, at one time or the other, objected to by both sides and perhaps this alone, apart from anything, else is sufficient to confirm his impartiality.

It may be recalled that at the very inception of the Committee, Shri Prashant Bhushan, on behalf of one of the groups that were agitating against the recommendation for Justice Dinakaran's appointment as a judge of the Supreme Court and were demanding an enquiry for his removal as a judge of the High Court addressed a letter to the Chairman, Rajya Sabha objecting to the inclusion of Mr. P.P. Rao on the Committee. The objection was based on the ground that even before the notice of motion was presented in the Rajya Sabha, leading to the formation of the Committee, and while the demand to hold an enquiry against the judge was still gaining ground Mr. Justice P.D. Dinakaran had met and consulted Mr. Rao in the matter. On that occasion Mr. Rao had made an offer to quit the Committee but his offer was not accepted by the Chairman. As the Committee proceeded with its work, with Mr. Rao as one of its members, there was no complaint or objection from any quarter. All the misgivings were satisfied and the groups and organizations that might be called as the initial whistle-blowers appear to be quite comfortable with Mr. Rao on the Committee. Now the objection has come from the side of the Judge whose conduct is the subject of enquiry.

The earlier objection was completely misconceived and without basis but it did not have any ulterior motive. Unfortunately the same can not be said about the present objection. It is clearly an after thought and has an oblique motive.

The applicant was aware that Mr. Rao is a member of the Committee from the day one. As early as on May 12, 2010, he had addressed a letter to the Chairman, Rajya Sabha urging him to have the proceedings before the Committee expedited. In the letter, he mentioned the names of each of the three members of the Committee, as it was in existence at that time, including Mr. P.P. Rao, Senior Advocate but there is not a whisper of protest against Mr. Rao's inclusion in the Committee. Paragraph 3 of the letter reads as follows:-

"I have also learnt through print and electronic media that a Committee, as contemplated under Section 3(b) of [The] Judges (Inquiry) Act, 1968, has been constituted by Your Excellency consisting of Hon'ble Mr. Justice V.S. Sirpurkar, Judge, Supreme Count of India; Hon'ble Mr. Justice A.R. Dave, the then Chief Justice, Andhra Pradesh High Court and Mr. P.P. Rao, Senior Advocate, jurist, in January, 2010, but till date I have not officially heard anything in this connection to enable me to explain my case. Now that Mr. Justice A.R. Dave is elevated to the Supreme Court of India, the Committee requires to be reconstituted."

Mr. Justice P.D. Dinakaran was given reply by Shri K.D. Singh, Secretary to the Committee by his letter dated August 4, 2010. From the letter it was evident that following Justice Dave's elevation, the Committee was re-constituted and Justice J.S. Khehar, who at that time was Chief Justice of the Uttarakhand High Court was brought on the Committee in his place.

The letter went on to say that the Committee consisting of Hon'ble Mr. Justice V.S. Sirpurkar, Judge, Supreme Court of India, Hon'ble Mr. Justice J.S. Khehar, Chief Justice of Uttarakhand High Court and Shri P.P. Rao, Senior Advocate, was examining the Notice of Motion. Mr. Justice Dinakaran did not get back raising any objection against Mr. Rao's presence on the Committee.

On November 27, 2010, Dr. Mrs. K.M. Vinodhini Dinakaram, wife of Mr. Justice P.D. Dinakaran sent a letter addressed to the three members of the Committee urging that in connection with the enquiry her aged relatives might not be harassed and further that the Committee should not rely upon the statements of certain persons, named in the letter, who were inimically disposed of towards them. This letter was sent separately to all the three members, including Mr. P.P. Rao. This letter too, does not even suggest any reservation about the inclusion of Mr. Rao in the Committee.

The objection is raised for the first time only after a notice along with the charges and the list of witnesses and documents in support of the charges were served upon the Judge.

The stage and the time at which the objection is raised make it clear that the object is to somehow scuttle the enquiry by causing delay in the Committee's proceedings."

(emphasis supplied)

13. Shri Amarendra Sharan, learned senior counsel for the petitioner argued that inclusion of respondent No.3 in the Committee constituted by the Chairman has the effect of vitiating the proceedings held so far because the said respondent is biased against the petitioner. Shri Sharan emphasized that by virtue of his active participation in the seminar organized by the Bar Association of India on 28.11.2009, respondent No.3 had disqualified himself from being a member of the Committee and on being apprised of the relevant facts, the Chairman should have changed the Committee by accepting the recusal of respondent No.3. Learned senior counsel argued that a fair, impartial and unbiased investigation into the allegations levelled against him is an integral part of fundamental right to life guaranteed to the petitioner under Articles 14 and 21 of the Constitution and he cannot be deprived of that right by invoking the doctrine of waiver. In support of his arguments, Shri Amarendra Sharan relied upon the judgments of this Court in Maneka Gandhi v. Union of India (1978) 1 SCC 248, M.H. Hoskot v. State of Maharashtra (1978) 3 SCC 544, Ranjit Thakur v. Union of India (1987) 4 SCC 611, Triveniben v. State of Gujarat (1989) 1 SCC 678, R v. Bow Street Metropolitan Stipendiary Magistrate and others, ex parte Pinochet Ugarte (No.2) (1999) 1 All ER 577 and In re:

> Medicaments and Related Classes of Goods (No.2) 2001 (1) WLR 700. Learned senior counsel extensively referred to the dissenting view expressed by K. Ramaswamy, J. in Krishna Swami v. Union of India and others (1992) 4 SCC 605 and

argued that the propositions laid down by the learned Judge on the issues not decided by the majority should be treated as declaration of law by this Court for the purpose of Article 141 of the Constitution and the same is binding.

14. Shri U.U. Lalit, learned senior counsel appearing for respondent No.1 invited the Court's attention to letter dated 12.5.2010 written by the petitioner to the Vice-President and Chairman of the Rajya Sabha to show that even before receiving official communication, the petitioner had become aware of the fact that respondent No.3 was a member of the Committee constituted under Section 3(2) of the Act. Shri Lalit then argued that the Court should not entertain objection to the inclusion of respondent No.3 in the Committee on the ground that he is biased against the petitioner because the latter did not raise any objection in that regard till the receipt of notice dated 16.3.2011, despite the fact that he knew that respondent No.3 had participated in the seminar organized on 28.11.2009, gave a speech opposing his elevation to this Court and also drafted a resolution to that effect. Learned senior counsel then submitted that after meeting respondent No.3 on 6.12.2009 at the latter's residence, the petitioner was fully satisfied that the said respondent had nothing against him. Learned senior counsel also pointed out that even in the letter written by the petitioner's wife there was no objection against respondent No.3 being a member of the Committee on the ground that he had pre-judged the guilt of her husband. Learned senior counsel submitted that after reading the representations made by the petitioner and his wife, no person of reasonable prudence can carry an impression that the Committee of which respondent No.3 is a member will not be able to objectively investigate into the charges framed against the petitioner. Learned senior counsel relied upon the judgments of this Court in Manak Lal v. Dr.Prem Chand Singhvi AIR 1957 SC 425, Dr. G. Sarana v. University of Lucknow (1976) 3 SCC 585 and R.K. Anand v. Delhi High Court (2009) 8 SCC 106 and argued that by maintaining silence for over one year against the appointment of respondent No.3 as member of the Committee, the petitioner will be deemed to have waived his right to question the constitution of the Committee.

15. Shri Prashant Bhushan, learned counsel for the intervenor also referred to letter dated 12.5.2010 and submitted that the petitioner did not harbour any apprehension of bias of respondent No.3, whose participation in the seminar was known to him as early as in November 1999 and this was the reason he sought appointment from the said respondent and argued that belated objection raised by the petitioner against the constitution of the Committee should not be entertained.

16. We have thoughtfully considered the entire matter. Two questions which arise for consideration are whether by virtue of his active participation in the seminar organised by the Bar Association of India on 28.11.2009 and his opposition to the elevation of the petitioner to this Court are sufficient to disqualify respondent No.3 from being included in the Committee constituted under Section 3(2) of the Act and whether by his conduct the petitioner will be deemed to have waived his right to object to the appointment of respondent No.3 as a member of the Committee.

17. Since a good deal of arguments were advanced by the learned counsel on the scope of Articles 121 and 124 of the Constitution, it may be useful to notice these Articles. Article 121 declares that no discussion shall take place in Parliament with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties except upon a motion presenting an address

to the President for the removal of the Judge. Article 124(4) lays down that 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. Article 124(5) lays down that Parliament may by law regulate the procedure for the presentation of an address and for the investigation and proof of the misbehaviour or incapacity of a Judge under clause (4). By virtue of Article 217(1)(b), the provision contained in Article 124(4) has been made applicable in the matter of removal of a Judge of the High Court.

18. Articles 121 and 124 were interpreted by the Constitution Bench in Sub-Committee on Judicial Accountability vs. Union of India (1991) 4 SCC 699. In that case, the Court considered four writ petitions filed in the backdrop of an Inquiry Committee constituted by the then Speaker of the Lok Sabha to inquire into the allegations made by 108 Members of the Ninth Lok Sabha who had prayed for removal of Mr.Justice V. Ramaswami of this Court. In two of the writ petitions filed by the organizations of advocates, prayer was made for issue of a mandamus to the Union of India to take immediate steps to enable the Inquiry Committee to discharge its functions under the Act and to restrain the learned Judge from performing judicial functions and from exercising judicial powers. In the third writ petition filed by an advocate, it was prayed that the learned Judge should not be restrained from discharging his judicial functions till motion for the presentation of address for his removal was disposed of by both the Houses of Parliament. The fourth writ petition was also filed by an advocate for striking down the Act on the ground that the same was ultra vires the provisions of Articles 100, 105, 118, 121 and 124(5) of the Constitution. He had also sought a declaration that the motion presented by 108 Members of the Parliament for the removal of the Judge had lapsed with the dissolution of the Ninth Lok Sabha. Along with the four writ petitions, the Court also transferred and disposed of Writ Petition (C) No.1061 of 1991 which was pending before the Delhi High Court with prayer similar to those made in one of the four writ petitions. The majority judgment was delivered by B.C. Ray, J. on his behalf and on behalf of M.N. Venkatachaliah, J.S. Verma and S.C. Agrawal, JJ. The learned Judge noticed the procedure prevalent in England as also the provisions contained in Canadian, Australian and United States Constitutions for removal of judges of Superior Courts, referred to the resolutions passed in 19th Biennial Conference of the International Bar Association held at New Delhi in October, 1982, the First World Conference on the Independence of Justice held at Montreal on 10.6.1983, Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan in August-September, 1985, debate in the Constituent Assembly and observed:

> "But the constitutional scheme in India seeks to achieve a judicious blend of the political and judicial processes for the removal of Judges. Though it appears at the first sight that the proceedings of the Constituent Assembly relating to the adoption of clauses (4) and (5) of Article 124 seem to point to the contrary and evince an intention to exclude determination by a judicial process of the correctness of the allegations of misbehaviour or incapacity on a more careful examination this is not the correct conclusion."

The learned Judge then referred to the scheme of Articles 121 and 124 and observed:

> "Accordingly, the scheme is that the entire process of removal is in two parts -- the first part under clause (5) from initiation to investigation and proof of misbehaviour or incapacity is covered by an enacted law, Parliament's role being only legislative as in all the laws enacted by it; and the second part only after proof under clause (4) is in Parliament, that process commencing only on proof in accordance with the law enacted under clause (5). Thus the first part is entirely statutory while the second part alone is the parliamentary process. The Constitution intended a clear provision for the first part covered fully by enacted law, the validity of which and the process thereunder being subject to judicial review independent of any political colour and after proof it was intended to be a parliamentary process. It is this synthesis made in our Constitutional Scheme for removal of a Judge.
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> If the motion for presenting an address for removal is envisaged by Articles 121 and 124(4) `on ground of proved misbehaviour or incapacity' it presupposes that misbehaviour or incapacity has been proved earlier. This is more so on account of the expression `investigation and proof' used in clause (5) with specific reference to clause (4). This indicates that `investigation and proof' of misbehaviour or incapacity is not within clause (4) but within clause (5). Use of the expression `same session' in clause (4) without any reference to session in clause (5) also indicates that session of House has no significance for clause (5) i.e., `investigation and proof' which is to be entirely governed by the enacted law and not the parliamentary practice which may be altered by each Lok Sabha.
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> The significance of the word `proved' before the expression `misbehaviour or incapacity' in clause (4) of Article 124 is also indicated when the provision is compared with Article 317 providing for removal of a member of the Public Service Commission. The expression in clause (1) of Article 317 used for describing the ground of removal is `the ground of misbehaviour' while in clause (4) of Article 124, it is, `the ground of proved misbehaviour or incapacity'. The procedure for removal of a member of the Public Service Commission is also prescribed in clause (1) which provides for an inquiry by the Supreme Court on a reference made for this purpose. In the case of a Judge, the procedure for investigation and proof is to be in accordance with the law enacted by the Parliament under clause (5) of Article 124. In view of the fact that the adjudication of the ground of misbehaviour under Article 317(1) is to be by the Supreme Court, in the case of a Judge who is a higher constitutional functionary, the requirement of judicial determination of the ground is reinforced by the addition of the word `proved' in Article 124(4) and the requirement of law for this purpose under Article 124(5). Indeed, the Act reflects the constitutional philosophy of both the judicial and political elements of the process of removal. The ultimate authority remains with the Parliament in the sense that even if the committee for investigation records a finding that the Judge is guilty of the charges it is yet open to the Parliament to decide not to present an address to the President for

removal. But if the committee records a finding that the Judge is not guilty, then the political element in the process of removal has no further option. The law is, indeed, a civilised piece of legislation reconciling the concept of accountability of Judges and the values of judicial independence."

19. We may also notice Sections 3 to 6 of the Act which was enacted by Parliament under Article 124(5) of the Constitution. The same read as under:

"3. Investigation into misbehaviour or incapacity of Judge by Committee.-(1) If notice is given of a motion for presenting an address to the President praying for the removal of a Judge signed,-

(a) in the case of a notice given in the House of the People, by not less than one hundred members of that House;

(b) in the case of a notice given in the Council of States, by not less than fifty members of that Council, then, the Speaker or, as the case may be, the Chairman may, after consulting such persons, if any, as he thinks fit and after considering such materials, if any, as may be available to him , either admit the motion or refuse to admit the same. (2) If the motion referred to in sub- section (1) is admitted, the Speaker or, as the case may be, the Chairman shall keep the motion pending and constitute, as soon as may be, for the purpose of making an investigation into the grounds on which the removal of a Judge is prayed for, a Committee consisting of three members of whom-

(a) one shall be chosen from among the Chief Justices and other Judges of the Supreme Court;

(b) one shall be chosen from among the Chief Justices of the High Courts; and

(c) one shall be a person who is, in the opinion of the Speaker or, as the case may be, the Chairman, a distinguished jurist:

Provided that where notices of a motion referred to in sub- section (1) are given on the same day in both Houses of Parliament, no Committee shall be constituted unless the motion has been admitted in both Houses and where such motion has been admitted in both Houses, the Committee shall be constituted jointly by the Speaker and the Chairman:

Provided further that where notices of a motion as aforesaid are given in the Houses of Parliament on different dates, the notice which is given later shall stand rejected.

(3) The Committee shall frame definite charges against the Judge on the basis of which the investigation is proposed to be held.

(4) Such charges together with a statement of the grounds on which each such charge is based shall be communicated to the Judge and he shall be given a reasonable opportunity of presenting a written statement of defence within such time as may be specified in this behalf by the Committee. (8) The Committee may, after considering the written statement of the Judge and the medical report, if any, amend the charges framed under sub-section (3) and in such case, the Judge shall be given a reasonable opportunity of presenting a fresh written statement of defence.

(9) The Central Government may, if required by the Speaker or the Chairman, or both, as the case may be, appoint an advocate to conduct the case against the Judge.

4. Report of Committee.-(1) Subject to any rules that may be made in this behalf, the Committee shall have power to regulate its own procedure in making the investigation and shall give a reasonable opportunity to the Judge of cross-examining witness, adducing evidence and of being heard in his defence. (2) At the conclusion of the investigation, the Committee shall submit its report to the Speaker or, as the case may be, to the Chairman, or where the Committee has been constituted jointly by the Speaker and the Chairman, to both of them, stating therein its findings on each of the charges separately with such observation on the whole case as it thinks fit.

(3) The Speaker or the Chairman, or, where the Committee has been constituted jointly by the Speaker and the Chairman, both of them, shall cause the report submitted under sub-section (2) to be laid, as soon as may be, respectively before the House of the People and the Council of States.

5. Powers of Committee.-For the purpose of making any investigation under this Act, the Committee shall have the powers of a civil court, while trying a suit, under the Code of Civil Procedure, 1908, in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on oath;

(d) issuing commissions for the examination of witnesses or documents;

(e) such other matters as may be prescribed.

6. Consideration of report and procedure for presentation of an address for removal of Judge.-(1) If the report of the Committee contains a finding that the Judge is not guilty of any misbehaviour or does not suffer from any incapacity, then, no further steps shall be taken in either House of Parliament in relation to the report and the

motion pending in the House or the Houses of Parliament shall not be proceeded with.

(2) If the report of the Committee contains a finding that the Judge is guilty of any misbehaviour or suffers from any incapacity, then, the motion referred to in sub-section (1) of section 3 shall, together with the report of the Committee, be taken up for consideration by the House or the Houses of Parliament in which it is pending.

(3) If the motion is adopted by each House of Parliament in accordance with the provision of clause (4) of article 124 or, as the case may be, in accordance with that clause read with article 218 of the Constitution, then, the misbehaviour or incapacity of the Judge shall be deemed to have been proved and an address praying for the removal of the Judge shall be presented in the prescribed manner to the President by each House of Parliament in the same session in which the motion has been adopted. "

20. An analysis of the above reproduced provisions shows that Section 3(1) of the Act provides for admission of motion by the Speaker or, as the case may be, the Chairman provided it is supported by 100 members of the House of the People or 50 members of the Council of States, as the case may be. The Speaker or, as the case may be, the Chairman, is entitled to consult such person, if any, as he thinks fit and to consider such material, if any, as may be available to him. If the motion is admitted, the Speaker or, as the case may be, the Chairman has to keep the motion pending and to constitute a Committee for the purpose of making an investigation into the grounds on which the removal of a Judge is prayed for [Section 3(2)]. The Committee constituted for the purpose of investigation shall consist of three members of whom - (a) one shall be chosen from among the Chief Justice and other Judges of the Supreme Court, (b) one shall be chosen from among the Chief Justices of the High Courts and (c) one shall be a person who is in the opinion of the Speaker or, as the case may be, the Chairman, a distinguished jurist. In terms of Section 3(3), the Committee is required to frame definite charges against the Judge on the basis of which the investigation is proposed to be held. Section 3(4) requires that the charges together with a statement of the grounds on which each charge is based shall be communicated to the Judge and he shall be given a reasonable opportunity of presenting a written statement of defence. Section 3(8) deals with the situation where the Committee, after considering the written statement of the Judge, decides to amend the charges. In that event, the Judge is required to be given a reasonable opportunity of presenting a fresh written statement of defence. In terms of Section 3(9), the Central Government is empowered to appoint an advocate to conduct a case against the Judge. Section 4(1) declares that subject to any rules made in that behalf, the Committee shall have power to regulate its own procedure in making the investigation. It also lays down that the Committee shall give a reasonable opportunity to the Judge to cross- examine the witnesses, adduce evidence and be heard in his defence. Section 4(2) provides for submission of report by the Committee to the Speaker or, as the case may be, to the Chairman. It also provides

for submission of report both to the Speaker and the Chairman where the Committee has been jointly constituted by them. In terms of Section 4(3), the report of the Committee is required to be placed before both the Houses of Parliament where the Committee has been constituted jointly by the Speaker and the Chairman. Section 5 lays down that for the purpose of making investigation under the Act, the Committee shall have powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908 in matters relating to summoning of witnesses etc. Section 6(1) lays down that if the Committee finds that the Judge is not guilty of any misbehaviour or does not suffer from any incapacity, no further steps should be taken in either House of Parliament. Section 6(2) provides that if the report of the Committee contains a finding that the Judge is guilty of any misbehaviour or suffers from any incapacity, then the motion together with the report shall be taken up for consideration by the House in which the motion is pending. Section 6(3) provides that if the motion is adopted by each House of Parliament in accordance with the provisions of Article 124(4) or, as the case may be, in accordance with that clause read with Article 218, then the misbehaviour or incapacity of the Judge shall be deemed to have been proved and an address praying for the removal of the Judge shall be presented in the prescribed manner to the President by each House of Parliament in the same session in which the motion has been adopted.

21. In the backdrop of the relevant constitutional and statutory provisions, we shall now consider whether participation of respondent No.3 in the seminar organised by the Bar Association of India where he made speech opposing the petitioner's elevation to this Court and also drafted a resolution to that effect can lead to an inference that he was biased against the petitioner and he ought not to have been appointed as a member of the Committee in terms of Section 3(2)(c) of the Act.

22. The consideration of the aforesaid question needs to be prefaced by a brief reference to the nature and scope of the rule against bias and how the same has been applied by the Courts of common-law jurisdiction in India for invalidating judicial and administrative actions/orders. Natural justice is a branch of public law. It is a formidable weapon which can be wielded to secure justice to citizens. Rules of natural justice are `basic values' which a man has cherished throughout the ages. Principles of natural justice control all actions of public authorities by applying rules relating to reasonableness, good faith and justice, equity and good conscience. Natural justice is a part of law which relates to administration of justice. Rules of natural justice are indeed great assurances of justice and fairness. The underlying object of rules of natural justice is to ensure fundamental liberties and rights of subjects. They thus serve public interest. The golden rule which stands firmly established is that the doctrine of natural justice is not only to secure justice but to prevent miscarriage of justice.

23. The traditional English Law recognised the following two principles of natural justice:

> "(a) "Nemo debet esse judex in propria causa: No man shall be a judge in his own cause, or no man can act as both at the one and the same time - a party or a suitor and also as a judge, or the deciding authority must be impartial and without bias; and
>
> (b) Audi alteram partem: Hear the other side, or both the sides must be heard, or no man should be condemned unheard, or that there must be fairness on the part of the deciding authority."

However, over the years, the Courts through out the world have discovered new facets of the rules of natural justice and applied them to judicial, quasi- judicial and even administrative actions/decisions. At the same time, the Courts have repeatedly emphasized that the rules of natural justice are flexible and their application depends upon the facts of a given case and the statutory provisions, if any, applicable, nature of the right which may be affected and the consequences which may follow due to violation of the rules of natural justice.

24. In Russel v. Duke of Norfolk (1949) 1 All ER 108, Tucker, L.J. observed:

> "There are, in my view, no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with, and so forth."

In Byrne v. Kinematograph Renters Society Limited (1958) 2 All ER 579, Lord Harman made the following observations:

> "What, then, are the requirements of natural justice in a case of this kind? First, I think that the person accused should know the nature of the accusation made; secondly, that he should be given an opportunity to state his case; and thirdly, of course, that the tribunal should act in good faith. I do not think that there really is anything more."

In Union of India v. P.K. Roy AIR 1968 SC 850, Ramaswami, J. observed:

> "The extent and application of the doctrine of natural justice cannot be imprisoned within the strait-jacket of a rigid formula. The application of the doctrine depends upon the nature of the jurisdiction conferred on the administrative authority, upon the character of the rights of the persons affected, the scheme and policy of the statute and other relevant circumstances disclosed in the particular case."

In Suresh Koshy George v. University of Kerala AIR 1969 SC 198, K.S. Hegde, J. observed:

> ".....The rules of natural justice are not embodied rules. The question whether the requirements of natural justice have been met by the procedure adopted in a given case must depend to a great extent on the facts and circumstances of the case in

point, the constitution of the Tribunal and the rules under which it functions."

A.K. Kraipak v. Union of India (1969) 2 SCC 262 represents an important milestone in the field of administrative law. The question which came up for consideration by the Constitution Bench was whether Naqishbund who was a candidate seeking selection for appointment to the All India Forest Service was disqualified from being a member of the selection board. One of the issues considered by the Court was whether the rules of natural justice were applicable to purely administrative action. After noticing some precedents on the subject, the Court held:

> "The dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. For determining whether a power is an administrative power or a quasi-judicial power one has to look to the nature of the power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised. Under our Constitution the rule of law pervades over the entire field of administration. Every organ of the State under our Constitution is regulated and controlled by the rule of law. In a welfare State like ours it is inevitable that the jurisdiction of the administrative bodies is increasing at a rapid rate. The concept of rule of law would lose its vitality if the instrumentalities of the State are not charged with the duty of discharging their functions in a fair and just manner. The requirement of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously. The procedures which are considered inherent in the exercise of a judicial power are merely those which facilitate if not ensure a just and fair decision. In recent years the concept of quasi-judicial power has been undergoing a radical change. What was considered as an administrative power some years back is now being considered as a quasi- judicial power."

The Court then considered whether the rules of natural justice were applicable to a case involving selection for appointment to a particular service. The learned Attorney General argued that the rules of natural justice were not applicable to the process of selection. The Constitution Bench referred to the judgments of the Queen's Bench in re H.K. (An infant) (1967) 2 QB 617 and of this Court in State of Orissa v. Dr.(Miss) Binapani Dei (1967) 2 SCR 625 and observed:

> "The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules namely: (1) no one shall be a judge in his own case (Nemo debet esse judex propria causa) and (2) no decision shall be given against a party without affording him a reasonable hearing (audi alteram partem) . Ver y soon thereafter a third rule was envisaged and that is that quasi- judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules

> came to be added to the rules of natural justice. Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi- judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi- judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry. As observed by this Court in Suresh Koshy George v. University of Kerala the rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case."

(emphasis supplied) In Maneka Gandhi v. Union of India (supra), a larger Bench of seven Judges considered whether passport of the petitioner could be impounded without giving her notice and opportunity of hearing. Bhagwati, J, speaking for himself and for Untwalia and Fazal Ali, JJ, gave a new dimension to the rule of audi alteram partem and declared that an action taken in violation of that rule is arbitrary and violative of Articles 14 and 21 of the Constitution. The learned Judge referred to Ridge v. Baldwin (1964) AC 40, State of Orissa v. Dr.(Miss) Binapani Dei (supra), re H.K.(An Infant) (supra) and A.K. Kraipak v. Union of India (supra) and observed:

> "The audi alteram partem rule is intended to inject justice into the law and it cannot be applied to defeat the ends of justice, or to make the law "lifeless, absurd, stultifying, self-defeating or plainly contrary to the common sense of the situation". Since the life of the law is not logic but experience and every legal proposition must, in the ultimate analysis, be tested on the touchstone of pragmatic realism, the audi alteram partem rule would, by the experiential test, be excluded, if importing the right to be heard has the effect of paralysing the administrative process or the need for promptitude or the urgency of the situation so demands. But at the same time it must be remembered that this is a rule of vital importance in the field of administrative law and it must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands. It is a wholesome rule designed to secure the rule of law and the court should not be too ready to eschew it in its application to a given case. True it is that in questions of this kind a fanatical or doctrinaire approach should be avoided, but that does not mean that merely because the traditional methodology of a formalised hearing may have the effect of stultifying the exercise of the statutory power, the audi alteram partem should be wholly

> excluded. The court must make every effort to salvage this cardinal rule to the maximum extent permissible in a given case. It must not be forgotten that "natural justice is pragmatically flexible and is amenable to capsulation under the compulsive pressure of circumstances".

The audi alteram partem rule is not cast in a rigid mould and judicial decisions establish that it may suffer situational modifications. The core of it must, however, remain, namely, that the person affected must have a reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise.

A fair opportunity of being heard following immediately upon the order impounding the passport would satisfy the mandate of natural justice and a provision requiring giving of such opportunity to the person concerned can and should be read by implication in the Passports Act, 1967. If such a provision were held to be incorporated in the Passports Act, 1967 by necessary implication, as we hold it must be, the procedure prescribed by the Act for impounding a passport would be right, fair and just and it would not suffer from the vice of arbitrariness or unreasonableness. We must, therefore, hold that the procedure "established" by the Passports Act, 1967 for impounding a passport is in conformity with the requirement of Article 21 and does not fall foul of that article."

In Olga Tellis v. Bombay Municipal Corporation (1985) 3 SCC 545, the Constitution Bench dealt with the question whether pavement and slum dwellers could be evicted without being heard. After adverting to various precedents on the subject, Chief Justice Chandrachud observed:

> "Just as a mala fide act has no existence in the eye of law, even so, unreasonableness vitiates law and procedure alike. It is therefore essential that the procedure prescribed by law for depriving a person of his fundamental right, in this case the right to life, must conform to the norms of justice and fairplay. Procedure, which is unjust or unfair in the circumstances of a case, attracts the vice of unreasonableness, thereby vitiating the law which prescribes that procedure and consequently, the action taken under it. Any action taken by a public authority which is invested with statutory powers has, therefore, to be tested by the application of two standards: the action must be within the scope of the authority conferred by law and secondly, it must be reasonable. If any action, within the scope of the authority conferred by law, is found to be unreasonable, it must mean that the procedure established by law under which that action is taken is itself unreasonable. The substance of the law cannot be divorced from the procedure which it prescribes for, how reasonable the law is, depends upon how fair is the procedure prescribed by it. Sir Raymond Evershed says that, "from the point of view of the ordinary citizen, it is the procedure that will most strongly weigh with him. He will tend to form his judgment of the excellence or otherwise of the legal system from his personal knowledge and experience in seeing the legal machine at work". Therefore, "He that takes the procedural sword shall perish with the sword."

25. In this case, we are concerned with the application of first of the two principles of natural justice recognized by the traditional English Law, i.e., Nemo debet esse judex in propria causa. This principle consists of the rule against bias or interest and is based on three maxims: (i) No man shall be a judge in his own cause; (ii) Justice should not only be done, but manifestly and undoubtedly be seen to be done; and (iii) Judges, like Caesar's wife should be above suspicion. The first requirement of natural justice is that the Judge should be impartial and neutral and must be free from bias. He is supposed to be indifferent to the parties to the controversy. He cannot act as Judge of a cause in which he himself has some interest either pecuniary or otherwise as it affords the strongest proof against neutrality. He must be in a position to act judicially and to decide the matter objectively. A Judge must be of sterner stuff. His mental equipoise must always remain firm and undetected. He should not allow his personal prejudice to go into the decision-making. The object is not merely that the scales be held even; it is also that they may not appear to be inclined. If the Judge is subject to bias in favour of or against either party to the dispute or is in a position that a bias can be assumed, he is disqualified to act as a Judge, and the proceedings will be vitiated. This rule applies to the judicial and administrative authorities required to act judicially or quasi-judicially.

26. A pecuniary (bias) interest, however small it may be, disqualifies a person from acting as a Judge. Other types of bias, however, do not stand on the same footing and the Courts have, from time to time, evolved different rules for deciding whether personal or official bias or bias as to subject matter or judicial obstinacy would vitiate the ultimate action/order/decision.

27. In The Queen v. Rand (1866) LR 1 (Q.B.D.) 230, the Queen's Bench was called upon to consider whether the factum of two justices being trustees of a hospital and a friendly society respectively, each of which had lent money to the Bradford Corporation on bonds charging the corporate fund were disqualified from participating in the proceedings which resulted in issue of certificate in favour of the corporation to take water of certain streams without permission of the mill owners. While answering the question in negative, Blackburn, J. evolved the following rule:

> ".....There is no doubt that any direct pecuniary interest, however small, in the subject of inquiry, does disqualify a person from acting as a judge in the matter; and if by any possibility these gentlemen, though mere trustees, could have been liable to costs, or to other pecuniary loss or gain, in consequence of their being so, we should think the question different from what it is: for that might be held an interest. But the only way in which the facts could affect their impartiality, would be that they might have a tendency to favour those for whom they were trustees; and that is an objection not in the nature of interest, but of a challenge to the favour. Wherever there is a real likelihood that the judge would, from kindred or any other cause, have a bias in favour of one of the parties, it would be very wrong in him to act; and we are not to be understood to say, that where there is a real bias of this sort this Court would not interfere; but in the present case there is no ground for doubting that the justices acted perfectly bona fide; and the only question is, whether in strict law, under such circumstances, the certificate of such justices is void, as it would be if they had a pecuniary interest; and we think that Reg. v. Dean of Rochester (1) is an authority, that circumstances, from which a suspicion of favour may arise, do not produce the

same effect as a pecuniary interest....."

28. In Rex v. Sussex Justices, Ex Parte McCarthy (1924) 1 KB 256, Lord Hewart, CJ., evolved the rule that justice should not only be done, but manifestly and undoubtedly be seen to be done. The facts of that case were that on August 21, 1923, a collision took place between a motor cycle driven by the applicant and a motor cycle and side-car driven by one Whitworth, and it was alleged that the latter and his wife sustained injuries in the collision. In respect of those injuries Messrs Langham, Son & Douglas, solicitors, Hastings, by a letter dated August 28, 1923, made a claim on behalf of Whitworth against the applicant for damages, and the police, after making inquiries into the circumstances of the collision, applied for and obtained a summon against the applicant for driving his motor cycle in a manner dangerous to the public. At the hearing of that summon on September 22, 1923, the applicant's solicitor, who stated in his affidavit that he had no knowledge of the officials of the court, inquired whether Mr. F.G. Langham, the clerk to the justices and a member of the said firm of Langham, Son & Douglas, was then sitting as clerk, and was informed that he was not, but had appointed a deputy for that day. The case was then heard, and at the conclusion of the evidence the justices retired to consider their decision, the deputy clerk retiring with them. When the justices returned into court they intimated that they had decided to convict the applicant, and they imposed a fine of 10 lakh and costs. Thereupon, the applicant's solicitor brought to the notice of the justices the fact, of which he said he had only become aware when the justices retired, that the deputy clerk was a brother of Mr. F.G. Langham, and was himself a partner in the firm of Langham, Son & Douglas, and so was interested as solicitor for Whitworth in the civil proceedings arising out of the collision in respect of which they had convicted the applicant. The solicitor in his affidavit stated that had he known the above facts he would have taken the objection before the case began. This rule was thereafter obtained on the ground that it was irregular for the deputy clerk in the circumstances to retire with the justices when considering their decision. The King's Bench quashed the conviction on the ground of bias. Lord Hewart C.J., posed the following question:

> ".....The question therefore is not whether in this case the deputy clerk made any observation or offered any criticism which he might not properly have made or offered; the question is whether he was so related to the case in its civil aspect as to be unfit to act as clerk to the justices in the criminal matter..... ....."

He then proceeded to observe:

> ".....The answer to that question depends not upon what actually was done but upon what might appear to be done. Nothing is to be done which creates even a suspicion that there has been an improper interference with the course of justice. Speaking for myself, I accept the statements contained in the justices' affidavit, but they show very clearly that the deputy clerk was connected with the case in a capacity which made it right that he should scrupulously abstain from referring to the matter in any way, although he retired with the justices; in other words, his one position was such that he could not, if he had been required to do so, discharge the duties which his other position involved. His twofold position was a manifest contradiction. In those circumstances I am satisfied that this conviction must be quashed, unless it can

be shown that the applicant or his solicitor was aware of the point that might be taken, refrained from taking it, and took his chance of an acquittal on the facts, and then, on a conviction being recorded, decided to take the point....."

29. In Regina v. Camborne Justices Ex parte Pearce (1955) 1 QB 41, the Divisional Court of Queen's Bench Division after reviewing large number of authorities including Rex v. Sussex Justices, Ex parte McCarthy (supra) and held that " real likelihood was the proper test, and that a real likelihood of bias had to be made to appear not only from the materials in fact ascertained by the party complaining, but from such further facts as he might readily have ascertained and easily verified in the course of his inquiries." The issue which arose for consideration in that case was whether the conviction of Henry Pearce was vitiated on four grounds including the one that throughout the hearing Mr. Donald Woodroffe Thomas, solicitor, acted as clerk to the justices and was called into their private room for the purpose of advising them, although he was at the time a councilor member of the council. The facts of that case were as follows:

"On January 27, 1948, the Public Health and Housing Committee (later known as the Health Committee) of the council recommended that the authority of the council should be given to its sampling officers to institute proceedings under the Food and Drugs Act, 1938. On February 24, 1948, the council adopted this recommendation. Since that date each of the council's sampling officers, including Rundle, had from time to time been given authorities under the seal of the council appointing them inspectors and authorized officers of the council under the Food and Drugs Acts and expressly authorizing them to institute, on behalf of the council, proceedings under the Acts before any court of summary jurisdiction. On June 20, 1952, a fresh sealed authority was given to Rundle and the other sampling officers, being an extension of the earlier authorities, and this sealed authority was in force at all material times. This authority empowered the sampling officers to institute proceedings under, inter alia, the Food and Drugs Acts in their own discretion and without seeking any specific authority from the council to do so, and it became the practice for the chief sampling officer to report to the Health Committee the action his subordinates had in fact taken. On January 4, 1954, Rundle laid the two informations against the applicant. On January 19, 1954, the chief sampling officer reported to the Health Committee that such proceedings were pending against the applicant.

On February 23, 1954, the council received and adopted the report of its Health Committee dated January 19, 1954. On April 13, 1954, the chief sampling officer reported to the Health Committee the result of the proceedings against the applicant. On May 11, 1954, the council received and adopted the report of its Health Committee dated April 13, 1954. Mr. Thomas was not present at any of the above-mentioned four meetings and indeed was never a member of the Health Committee or its predecessor, the Public Health and Housing Committee. Rundle laid the two informations in the exercise of his own discretion and upon his own responsibility in pursuance of the power conferred upon him by his sealed authority. Mr. Thomas was appointed clerk to the justices for the East Penwith Division of Cornwall on

> December 30, 1931. He was elected a member of Cornwall County Council on April 22, 1937. He acted as clerk to the justices during the trial of the applicant upon the informations at the Camborne Magistrates' Court on January 26, 1954. He did not retire with the justices while they were considering their verdict, but was later sent for by the chairman, who requested him to advise the justices upon a point of law. During the short time that he was with them the justices did not discuss the facts of the case at all, and having given his advice on the point of law he returned to court. Some appreciable time later the justices returned and gave their decision. At the hearing the applicant pleaded "Not Guilty." The prosecution was conducted by a solicitor in the full-time employment of the Cornwall County Council. The applicant was represented by counsel, instructed by his solicitors, Messrs. Stephens & Scown of St. Austell. An articled clerk, Mr. Philip Stephens (who was not related to any partner in the firm) attended counsel at the hearing on behalf of that firm. Neither the applicant, nor counsel, nor the articled clerk was aware at that time that the clerk to the justices was a member of the Cornwall County Council though that fact was well known to Mr. William Garfield Scown, the partner in the firm who had the conduct of the applicant's defence.
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> During the six years from 1948 to 1953 inclusive some 660 prosecutions by the Cornwall County Council were heard and determined by the East Penwith Magistrates' Court at which either Mr. Thomas or the deputy clerk to the justices, Mr. Garfield Uren, acted as clerk to the justices; yet so far as was known no previous objection had ever been made because Mr. Thomas acted as clerk to the justices during the hearing of an information by or on behalf of the Cornwall County Council. There was no allegation that Mr. Thomas attempted in any way improperly to influence the justices in their decision on January 26, 1954."

The question posed in that case was "what interest in "a judicial or quasi-judicial proceeding does the law regard as "sufficient to incapacitate a person from adjudicating or assisting "in adjudicating on it upon the ground of bias or appearance of "bias?" It is, of course, clear that any direct pecuniary or proprietary interest in the subject-matter of a proceeding, however small, operates as an automatic disqualification. In such a case the law assumes bias. What interest short of that will suffice? The Divisional Court referred to judgment of Blackburn, J. in The Queen v. Rand (supra), in which the test of real likelihood of bias was evolved, Lord Esher M.R. in Eckersley v. Mersey Docks and Harbour Board (1894) 2 QB 667, Rex v. Justices of County Cork (1910) 2 IR 271, Rex v. Sussex Justices, Ex parte McCarthy (supra), Frome United Breweries Company v. Bath Justices, (1926) AC 586, Rex v. Essex Justices, Ex parte Perkins (1927) 2 KB 475 and held:

> "In the judgment of this court the right test is that prescribed by Blackburn J., namely, that to disqualify a person from acting in a judicial or quasi-judicial capacity upon the ground of interest (other than pecuniary or proprietary) in the subject-matter of the proceeding, a real likelihood of bias must be shown. This court is further of opinion that a real likelihood of bias must be made to appear not only from the materials in fact ascertained by the party complaining, but from such

> further facts as he might readily have ascertained and easily verified in the course of his inquiries.
>
> In the present case, for example, the facts relied on in the applicant's statement under R.S.C., Ord. 59, r. 3 (2), might create a more sinister impression than the full facts as found by this court, all or most of which would have been available to the applicant had he pursued his inquiries upon learning that Mr. Thomas was a member of the Cornwall County Council, and none of these further facts was disputed at the hearing of this motion.
>
> The frequency with which allegations of bias have come before the courts in recent times seems to indicate that Lord Hewart's reminder in the Sussex Justices case that it "is of fundamental "

importance that justice should not only be done, but should "manifestly and undoubtedly be seen to be done "is being urged as a warrant for quashing convictions or invalidating orders upon quite unsubstantial grounds and, indeed, in some cases upon the flimsiest pretexts of bias. Whilst indorsing and fully maintaining the integrity of the principle reasserted by Lord Hewart, this court feels that the continued citation of it in cases to which it is not applicable may lead to the erroneous impression that it is more important that justice should appear to be done than that it should in fact be done."

(emphasis supplied)

30. In Metropolitan Properties (FGC) Ltd. v. Lannon (1969) 1 QB 577, the Court of Appeal applied suspicion test and reasserted `justice must be seen to be done' as the operative principle.

31. In R v. Gough (1993) AC 646, the House of Lords applied the `real likelihood' test by using the expression `real danger'. Two portions of the leading speech given by Lord Goff are extracted below:

> "In my opinion, if the circumstances of the case (as ascertained by the court), it appears that there was a real likelihood, in the sense of a real possibility, of bias on the part of a justice or other member of an inferior tribunal, justice requires that the decision should not be allowed to stand. I am by no means persuaded that, in its original form, the real likelihood test required that any more rigorous criterion should be applied. Furthermore the test as so stated gives sufficient effect, in cases of apparent bias, to the principle that justice must manifestly be seen to be done, and it is unnecessary, in my opinion, to have recourse to a test based on mere suspicion, or even reasonable suspicion, for that purpose"
>
> "In conclusion, I wish to express my understanding of the law as follows. I think it possible, and desirable, that the same test should be applicable in all cases of apparent bias, whether concerned with justices or members of other inferior tribunals, or with jurors, or with arbitrators. Likewise I consider that, in cases

> concerned with jurors, the same test should be applied by a judge to whose attention the possibility of bias on the part of a juror has been drawn in the course of a trial, and by the Court of Appeal when it considers such a question on appeal. Furthermore, I think it unnecessary, in formulating the appropriate test, to require that the court should look at the matter through the eyes of a reasonable man, because the court in cases such as these personifies the reasonable man; and in any event the court has first to ascertain the relevant circumstances from the available evidence, knowledge of which would not necessarily be available to an observer in court at the relevant time. Finally, for the avoidance of doubt, I prefer to state the test in terms of real danger rather than real likelihood, to ensure that the court is thinking in terms of possibility rather than probability of bias. Accordingly, having ascertained the relevant circumstances, the court should ask itself whether, having regard to those circumstances, there was a real danger of bias on the part of the relevant member of the tribunal in question, in the sense that he might unfairly regard (or have unfairly regarded) with favour, or disfavour, the case of a party to the issue under consideration by him...."

(emphasis supplied)

32. In R v. Bow Street Metropolitan Stipendiary Magistrate and others, ex parte Pinochet Ugarte (No.2) (supra), the House of Lords considered the question whether the factum of one of the Law Lords, who was a director and chairperson of Amnesty International Charity Limited, was disqualified from being a party in the proceedings of an appeal in which Amnesty International was granted leave to intervene. In that case, Senator Augusto Pinochet Ugarte applied for setting aside the decision of the House of Lords whereby the appeal of the Commissioner of Police of the Metropolis and the Government of Spain was allowed and the decision of the Queen's Bench Divisional Court quashing the provisional warrant issued for the arrest of the petitioner was set aside. The ground on which review of the decision was sought was that Lord Hoffmann, who constituted the majority of the House of Lords, was biased because he was a director and chairperson of Amnesty International Charity Limited. Lord Browne- Wilkinson, with whom other members of the Bench agreed, noted that neither Senator Pinochet nor his legal advisors were aware of any connection between Lord Hoffmann and Amnesty International until after the judgment was delivered on 25.11.1998 in the main case and the appeal filed against the judgment of the Queen's Bench Divisional Court was allowed by a majority of three to two. After the judgment, relationship of Lord Hoffmann and his wife with Amnesty International and its constituents were revealed. Lord Browne-Wilkinson noted that there was no allegation that Lord Hoffmann was in fact biased but the argument was that there was a real danger or reasonable apprehension or suspicion that Lord Hoffmann might have been biased and proceeded to observe:

> "The fundamental principle is that a man may not be a judge in his on cause. This principle, as developed by the courts, has two very similar but not identical implications. First it may be applied literally: if a judge is in fact a party to the litigation or has a financial or proprietary interest in its outcome then he is indeed sitting as a judge in his own cause. In that case, the mere fact that he is a party to the

action or has a financial or proprietary interest in its outcome is sufficient to cause his automatic disqualification. The second application of the principle is where a judge is not a party to the suit and does not have a financial interest in its outcome, but in some other way his conduct or behaviour may give rise to a suspicion that he is not impartial, for example because of his friendship with a party. This second type of case is not strictly speaking an application of the principle that a man must not be judge in his own cause, since the judge will not normally be himself benefiting, but providing a benefit for another by failing to be impartial.

In my judgment, this case falls within the first category of case, viz where the judge is disqualified because he is a judge in his own cause. In such a case, once it is shown that the judge is himself a party to the cause, or has a relevant interest in its subject matter, he is disqualified without any investigation into whether there was a likelihood or suspicion of bias. The mere fact of his interest is sufficient to disqualify him unless he has made sufficient disclosure: see Shetreet Judges on Trial (1976) p 303 and De Smith, Woolf and Jowell Judicial Review of Administrative Action (5th edn, 1995) p 525. I will call this 'automatic disqualification'.

xxx xxx xxx xxx The importance of this point in the present case is this. Neither AI, nor AICL, have any financial interest in the outcome of this litigation. We are here confronted, as was Lord Hoffmann, with a novel situation where the outcome of the litigation did not lead to financial benefit to anyone. The interest of AI in the litigation was not financial; it was its interest in achieving the trial and possible conviction of Senator Pinochet for crimes against humanity.

By seeking to intervene in this appeal and being allowed so to intervene, in practice AI became a party to the appeal. Therefore if, in the circumstances, it is right to treat Lord Hoffmann as being the alter ego of AI and therefore a judge in his own cause, then he must have been automatically disqualified on the grounds that he was a party to the appeal. Alternatively, even if it be not right to say that Lord Hoffmann was a party to the appeal as such, the question then arises whether, in non-financial litigation, anything other than a financial or proprietary interest in the outcome is sufficient automatically to disqualify a man from sitting as judge in the cause.

Are the facts such as to require Lord Hoffmann to be treated as being himself a party to this appeal? The facts are striking and unusual. One of the parties to the appeal is an unincorporated association, AI. One of the constituent parts of that unincorporated association is AICL. AICL was established, for tax purposes, to carry out part of the functions of AI--those parts which were charitable--which had previously been carried on either by AI itself or by AIL. Lord Hoffmann is a director and chairman of AICL, which is wholly controlled by AI, since its members (who ultimately control it) are all the members of the international executive committee of AI. A large part of the work of AI is, as a matter of strict law, carried on by AICL which instructs AIL to do the work on its behalf. In reality, AI, AICL and AIL are a

close-knit group carrying on the work of AI.

However, close as these links are, I do not think it would be right to identify Lord Hoffmann personally as being a party to the appeal. He is closely linked to AI but he is not in fact AI. Although this is an area in which legal technicality is particularly to be avoided, it cannot be ignored that Lord Hoffmann took no part in running AI. Lord Hoffmann, AICL and the executive committee of AI are in law separate people. Then is this a case in which it can be said that Lord Hoffmann had an `interest' which must lead to his automatic disqualification? Hitherto only pecuniary and proprietary interests have led to automatic disqualification. But, as I have indicated, this litigation is most unusual. It is not civil litigation but criminal litigation. Most unusually, by allowing AI to intervene, there is a party to a criminal cause or matter who is neither prosecutor nor accused. That party, AI, shares with the government of Spain and the CPS, not a financial interest but an interest to establish that there is no immunity for ex-heads of state in relation to crimes against humanity. The interest of these parties is to procure Senator Pinochet's extradition and trial--a non-pecuniary interest. So far as AICL is concerned, cl

(c) of its memorandum provides that one of its objects is 'to procure the abolition of torture, extra-judicial execution and disappearance'. AI has, amongst other objects, the same objects.

Although AICL, as a charity, cannot campaign to change the law, it is concerned by other means to procure the abolition of these crimes against humanity. In my opinion, therefore, AICL plainly had a non-pecuniary interest, to establish that Senator Pinochet was not immune.

That being the case, the question is whether in the very unusual circumstances of this case a non-pecuniary interest to achieve a particular result is sufficient to give rise to automatic disqualification and, if so, whether the fact that AICL had such an interest necessarily leads to the conclusion that Lord Hoffmann, as a director of AICL, was automatically disqualified from sitting on the appeal? My Lords, in my judgment, although the cases have all dealt with automatic disqualification on the grounds of pecuniary interest, there is no good reason in principle for so limiting automatic disqualification. The rationale of the whole rule is that a man cannot be a judge in his own cause. In civil litigation the matters in issue will normally have an economic impact; therefore a judge is automatically disqualified if he stands to make a financial gain as a consequence of his own decision of the case. But if, as in the present case, the matter at issue does not relate to money or economic advantage but is concerned with the promotion of the cause, the rationale disqualifying a judge applies just as much if the judge's decision will lead to the promotion of a cause in which the judge is involved together with one of the parties. Thus in my opinion if Lord Hoffmann had been a member of AI he would have been automatically disqualified because of his non-pecuniary interest in establishing that Senator Pinochet was not entitled to Immunity. Indeed, so much I understood to have been conceded by Mr Duffy.

Can it make any difference that, instead of being a direct member of AI, Lord Hoffmann is a director of AICL, that is of a company which is wholly controlled by AI and is carrying on much of its work? Surely not. The substance of the matter is that AI, AIL and AICL are all various parts of an entity or movement working in different fields towards the same goals. If the absolute impartiality of the judiciary is to be maintained, there must be a rule which automatically" disqualifies a judge who is involved, whether personally or as a director of a company, in promoting the same causes in the same organisation as is a party to the suit. There is no room for fine distinctions if Lord Hewart CJ's famous dictum is to be observed: it is 'of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done'."

(emphasis supplied)

33. In re Medicaments and Related Classes of Goods (No.2) (supra), the Court of Appeal set aside the decision of the Restrictive Practices Court on the ground of real danger of bias by making the following observations:

> ".....The court had first to ascertain all the circumstances which had a bearing on the suggestion that the judge was biased and then ask whether those circumstances would lead a fair- minded and informed observer to conclude that there was a real possibility, or a real danger, the two being the same, that the judge was biased; that the material circumstances included any explanation given by the impugned judge as to his knowledge or appreciation of those circumstances and where any such explanation was disputed the reviewing court did not have to rule whether the explanation should be accepted or rejected but rather had to decide whether the fair-minded observer would consider that there was a real danger of bias notwithstanding the explanation advanced; that instead of determining whether R's statement was truthful the court should have considered what impression her conduct, including her explanation for it, would have had on a fair-minded observer; that such an observer would not have been convinced that all prospects of R working for the firm at some time in the future had been destroyed or that she might not still hope to work for them in due course; that, in those circumstances, the fair-minded observer would apprehend that there was a real danger that R would be unable to make an objective and impartial appraisal of the expert evidence placed before the court by the firm; and that, accordingly, R ought to have recused herself and the other members of the court should stand down."

34. It is, thus, evident that the English Courts have applied different tests for deciding whether non-pecuniary bias would vitiate judicial or quasi judicial decision. Many judges have laid down and applied the `real likelihood' formula, holding that the test for disqualification is whether the facts, as assessed by the court, give rise to a real likelihood of bias. Other judges have employed a `reasonable suspicion' test, emphasizing that justice must be seen to be done, and that no person should adjudicate in any way if it might reasonably be thought that he ought not to act because of some personal interest. The Constitutional Court of South Africa has, in President of the Republic of South Africa v. South African Rugby Football Union 1999 (4) SA 147 while holding that onus of

establishing that there was ground for recusal of the members of the Court was on the applicant, made the following significant observations:

> ".....The question is whether a reasonable, objective and informed person would on the correct facts reasonably apprehend that the judge has not or will not bring an impartial mind to bear on the adjudication of the case, that is a mind open to persuasion by the evidence and the submissions of counsel. The reasonableness of the apprehension must be assessed in the light of the oath of office taken by the judges to administer justice without fear or favour; and their ability to carry out that oath by reason of their training and experience. It must be assumed that they can disabuse their minds of any irrelevant personal beliefs or predispositions. They must take into account the fact that they have a duty to sit in any case in which they are not obliged to recuse themselves. At the same time, it must never be forgotten that an impartial judge is a fundamental prerequisite for a fair trial and a judicial officer should not hesitate to recuse herself or himself if there are reasonable grounds on the part of a litigant for apprehending that the judicial officer, for whatever reasons, was not or will not be impartial."

The High Court of Australia has adopted a different approach, as is evident from the judgment of seven-Judge Bench in Johnson v. Johnson (2000) 174 Australian Law Reports 655. The parties to the appeal were married in November 1979. The marriage was dissolved in 1996. The proceedings before Anderson, J. arose out of a dispute as to the financial arrangements to be made following such dissolution. There was a substantial amount at stake. It was held that there was what the Full Court described as an "asset pool" valued at nearly $30m. Anderson, J. decided that the respondent (the wife) should receive 40% of that pool. One of the principal areas of dispute at the trial, which lasted for 66 days, concerned the extent of the appellant's assets and, in particular, whether he was beneficially interested in substantial offshore assets owned by other persons and entities. It is unnecessary to go into the detail of that dispute. What is important is that, at the trial, the respondent was asserting, and the appellant was denying, that the appellant was beneficially interested in various assets, and the investigation of that issue of fact involved a great deal of hearing time. On the 20th day of the hearing, Anderson, J. made a comment which resulted in an application by counsel for the appellant that he should disqualify himself. Anderson, J. declined the application. The Full Court of the Family Court upheld his decision. Five members of the Bench speaking through Gleeson, C.J., referred to the test applied in Australia in determining whether a Judge was disqualified by reason of the appearance of bias, i.e. whether a fair-minded lay observer might reasonably apprehend that the Judge might not bring an impartial and unprejudiced mind to the resolution of the question require to be decided and gave the following reasons for making a departure from the test applied in England:

> "That test has been adopted, in preference to a differently expressed test that has been applied in England, for the reason that it gives due recognition to the fundamental principle that justice must both be done, and be seen to be done. It is based upon the need for public confidence in the administration of justice. "If fair-minded people reasonably apprehend or suspect that the tribunal has prejudged

> the case, they cannot have confidence in the decision." The hypothetical reasonable observer of the judge's conduct is postulated in order to emphasise that the test is objective, is founded in the need for public confidence in the judiciary, and is not based purely upon the assessment by some judges of the capacity or performance of their colleagues. At the same time, two things need to be remembered: the observer is taken to be reasonable; and the person being observed is "a professional judge whose training, tradition and oath or affirmation require [the judge] to discard the irrelevant, the immaterial and the prejudicial"."

In his separate opinion, Kirby J. referred to the judgments of the House of Lords in R v. Gough (supra) as also R v. Bow Street Metropolitan Stipendiary Magistrate and others, ex parte Pinochet Ugarte (No.2) (supra) and observed:

> "It is a "fundamental rule" of natural justice and an "abiding value of our legal system" that every adjudicator must be free from bias. This same principle has been accepted in the international law of human rights, which supports the vigilant approach this court has taken to the possibility that the "parties or the public might entertain a reasonable apprehension" that an adjudicator may not be impartial. Thus, Art 14.1 of the International Covenant on Civil and Political Rights, the starting point for consideration of the relevant requirements of international law, slates:
>
> All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit al law, everyone shall be entitled to a fair and public hearing by a competent independent and impartial tribunal established by law.
>
> In Karttunen v Finland, elaborating that Article, the United Nations Human Rights Committee concluded that "impartiality"

of a court:

> . . . implies that judges must not harbour preconceptions about the matter put before them, and . . . they must not act in ways that promote the interests of one of the parties ... A trial flawed by the participation of a judge who, under domestic statutes, should have been disqualified cannot normally be considered to be fair or impartial within the meaning of article 14. Appearance of justice: The reason commonly given for adopting the comparatively strict approach that has found favour in this court in recent years is that it mirrors the importance attached by the law not only to the actuality of justice (that is, whether the adjudicator had, in fact, prejudged issues in the case) but also the appearance of impartiality both to the parties and to the community. From the point of view of public policy, the practical foundation for a relatively strict approach lies in the obligation on an appellate court to defend the purity of the administration of justice and thereby to sustain the community's confidence in the system. In the words of Lord Denning MR. "justice must be rooted

> in confidence: and confidence is destroyed when right-minded people go away thinking: `The judge was biased'."
>
> (emphasis supplied)

35. In India, the Courts have, by and large, applied the `real likelihood test' for deciding whether a particular decision of the judicial or quasi judicial body is vitiated due to bias. In Manak Lal v. Dr. Prem Chand Singhvi (supra), it was observed:

> "Every member of a tribunal that sits to try issues in judicial or quasi-judicial proceedings must be able to act judicially; and the essence of judicial decisions and judicial administration is that judges should be able to act impartially, objectively and without any bias. In such cases the test is not whether in fact a bias has affected the judgment; the test always is and must be whether a litigant could reasonably apprehend that a bias attributable to a member of the tribunal might have operated against him in the final decision of the tribunal. It is in this sense that it is often said that justice must not only be done but must also appear to be done."

36. In A.K. Kraipak v. Union of India (supra), the rule of bias was discussed in some detail in the context of selection for appointment to the Indian Forest Service. Although, Naqishbund who was a candidate for selection to the All India Forest Service and was also a member of the selection board did not sit in the selection board at the time of his name was considered but participated in its deliberations when the names of other candidates, who were his rivals were considered. Two important questions considered by the Court were whether the rules of natural justice were applicable in cases involving exercise of administrative power by the public authorities and whether the selection was vitiated due to bias. The Court answered both the questions in affirmative. While answering the second question, the Court noted that even though Naqishbund had not participated in the deliberations of the committee when his name was considered, but he was present when the claims of rivals were considered and observed:

> "At every stage of his participation in the deliberations of the selection board there was a conflict between his interest and duty. Under those circumstances it is difficult to believe that he could have been impartial. The real question is not whether he was biased. It is difficult to prove the state of mind of a person. Therefore what we have to see is whether there is reasonable ground for believing that he was likely to have been biased.... ..... In deciding the question of bias we have to take into consideration human probabilities and ordinary course of human conduct."

37. In S. Parthasarthi v. State of A.P. (1974) 3 SCC 459, Mathew, J. applied the `real likelihood test' and restored the decree passed by the trial Court which invalidated compulsory retirement of the appellant by way of punishment. In paragraph 16 of the judgment, Mathew, J. observed:

> ".....We think that the reviewing authority must make a determination on the basis of the whole evidence before it, whether a reasonable man would in the

> circumstances infer that there is real likelihood of bias. The Court must look at the impression which other people have. This follows from the principle that justice must not only be done but seen to be done. If right minded persons would think that there is real likelihood of bias on the part of an inquiring officer, he must not conduct the enquiry; nevertheless, there must be a real likelihood of bias. Surmise or conjecture would not be enough. There must exist circumstances from which reasonable men would think it probable or likely that the inquiring officer will be prejudiced against the delinquent. The Court will not inquire whether he was really prejudiced. If a reasonable man would think on the basis of the existing circumstances that he is likely to be prejudiced, that is sufficient to quash the decision....."

38. In Dr. G. Sarana v. University of Lucknow (supra), the Court referred to the judgments in A.K. Kraipak v. Union of India (supra), S. Parthasarthi v. State of A.P. (supra) and observed:

> ".....the real question is not whether a member of an administrative board while exercising quasi-judicial powers or discharging quasi-judicial functions was biased, for it is difficult to prove the mind of a person. What has to be seen is whether there is a reasonable ground for believing that he was likely to have been biased. In deciding the question of bias, human probabilities and ordinary course of human conduct have to be taken into consideration....."

39. In Ashok Kumar Yadav v. State of Haryana (1985) 4 SCC 417, the Court while reiterating that the judgment in A.K. Kraipak's case represents an important landmark in the development of administrative law and has contributed in a large measure to the strengthening of the rule of law, made a significant departure in cases involving selection by the Public Service Commissions. All this is evident from paragraph 18 of the judgment, which is extracted below:

> "18. We must straightaway point out that A.K. Kaipak case is a landmark in the development of administrative law and it has contributed in a large measure to the strengthening of the rule of law in this country. We would not like to whittle down in the slightest measure the vital principle laid down in this decision which has nourished the roots of the rule of law and injected justice and fair play into legality. There can be no doubt that if a Selection Committee is constituted for the purpose of selecting candidates on merits and one of the members of the Selection Committee is closely related to a candidate appearing for the selection, it would not be enough for such member merely to withdraw from participation in the interview of the candidate related to him but he must withdraw altogether from the entire selection process and ask the authorities to nominate another person in his place on the Selection Committee, because otherwise all the selections made would be vitiated on account of reasonable likelihood of bias affecting the process of selection. But the situation here is a little different because the selection of candidates to the Haryana Civil Service (Executive) and Allied Services is being made not by any Selection Committee constituted for that purpose but it is being done by the Haryana Public Service Commission which is a Commission set up under Article 316 of the Constitution. It is

> a Commission which consists of a Chairman and a specified number of members and is a constitutional authority. We do not think that the principle which requires that a member of a Selection Committee whose close relative is appearing for selection should decline to become a member of the Selection Committee or withdraw from it leaving it to the appointing authority to nominate another person in his place, need be applied in case of a constitutional authority like the Public Service Commission, whether Central or State. If a member of a Public Service Commission were to withdraw altogether from the selection process on the ground that a close relative of his is appearing for selection, no other person save a member can be substituted in his place. And it may sometimes happen that no other member is available to take the place of such member and the functioning of the Public Service Commission may be affected. When two or more members of a Public Service Commission are holding a viva voce examination, they are functioning not as individuals but as the Public Service Commission. Of course, we must make it clear that when a close relative of a member of a Public Service Commission is appearing for interview, such member must withdraw from participation in the interview of that candidate and must not take part in any discussion in regard to the merits of that candidate and even the marks or credits given to that candidate should not be disclosed to him."

(emphasis supplied)

40. The real likelihood test was again applied in Ranjit Thakur v. Union of India (1987) 4 SCC 611. In that case, the appellant had challenged his dismissal from service on the ground of violation of the provision contained in Section 130 of the Army Act, 1950. The facts of that case were that the appellant, who was already serving sentence of 28 days rigorous imprisonment, is said to have committed another offence for which he was subjected to summary court-martial and was dismissed from service. Respondent No.4 who had earlier punished the appellant was a member of the summary court-martial in terms of Section 130 of the Army Act, 1950. The appellant was entitled to object the presence of respondent No.4 in the summary court-martial, but this opportunity was not given to him. The writ petition filed by the appellant was summarily dismissed by the High Court. This Court held that violation of the mandate of Section 130 militates against and detracts from the concept of a fair trial. The Court then proceeded to consider whether respondent No.4 would have been biased against the appellant and observed:

> "The test of real likelihood of bias is whether a reasonable person, in possession of relevant information, would have thought that bias was likely and is whether respondent 4 was likely to be disposed to decide the matter only in a particular way.
>
> It is the essence of a judgment that it is made after due observance of the judicial process; that the court or tribunal passing it observes, at least the minimal requirements of natural justice; is composed of impartial persons acting fairly and without bias and in good faith. A judgment which is the result of bias or want of impartiality is a nullity and the trial "coram non-judice".

As to the tests of the likelihood of bias what is relevant is the reasonableness of the apprehension in that regard in the mind of the party. The proper approach for the Judge is not to look at his own mind and ask himself, however, honestly, "Am I biased?"; but to look at the mind of the party before him."

41. In Secretary to Government, Transport Department v. Munuswamy Mudaliar 1988 (Supp.) SCC 651, this Court considered the question whether a party to the arbitration agreement could seek change of an agreed arbitrator on the ground that being an employee of the State Government, the arbitrator will not be able to decide the dispute without bias. While reversing the judgment of the High Court which had confirmed the order of learned Judge, City Civil Court directing appointment of another person as an arbitrator, this Court observed:

> "Reasonable apprehension of bias in the mind of a reasonable man can be a ground for removal of the arbitrator. A predisposition to decide for or against one party, without proper regard to the true merits of the dispute is bias. There must be reasonable apprehension of that predisposition. The reasonable apprehension must be based on cogent materials. See the observations of Mustill and Boyd, Commercial Arbitration 1982 Edn., p. 214. Halsbury's Laws of England, 4th Edn., Vol. 2, para 551, p. 282 describe that the test for bias is whether a reasonable intelligent man, fully apprised of all the circumstances, would feel a serious apprehension of bias."

(emphasis supplied)

42. In Bihar State Mineral Development Corporation v. Encon Builders (I) (P) Ltd. (2003) 7 SCC 418, the Court applied the rule of bias in the context of a provision in the agreement which empowered the Managing Director of the appellant to terminate the agreement and also act as arbitrator. This Court applied the rule that a person cannot be a judge of his own cause and observed:

> "Actual bias would lead to an automatic disqualification where the decision-maker is shown to have an interest in the outcome of the case. Actual bias denotes an arbitrator who allows a decision to be influenced by partiality or prejudice and thereby deprives the litigant of the fundamental right to a fair trial by an impartial tribunal."

43. The principles which emerge from the aforesaid decisions are that no man can be a Judge in his own cause and justice should not only be done, but manifestly be seen to be done. Scales should not only be held even but it must not be seen to be inclined. A person having interest in the subject matter of cause is precluded from acting as a Judge. To disqualify a person from adjudicating on the ground of interest in the subject matter of lis, the test of real likelihood of the bias is to be applied. In other words, one has to enquire as to whether there is real danger of bias on the part of the person against whom such apprehension is expressed in the sense that he might favour or disfavour a party. In each case, the Court has to consider whether a fair minded and informed person, having considered all the facts would reasonably apprehend that the Judge would not act impartially. To

put it differently, the test would be whether a reasonably intelligent man fully apprised of all the facts would have a serious apprehension of bias. In cases of non-pecuniary bias, the `real likelihood' test has been preferred over the `reasonable suspicion' test and the Courts have consistently held that in deciding the question of bias one has to take into consideration human probabilities and ordinary course of human conduct. We may add that real likelihood of bias should appear not only from the materials ascertained by the complaining party, but also from such other facts which it could have readily ascertained and easily verified by making reasonable inquiries.

44. In Halsbury's Laws of England [Vol. 29(2) 4th Edn. Reissue 2002, para 560 page 379], the test of disqualification due to apparent bias has been elucidated in the following words:

> "560. Test of disqualification by apparent bias. The test applicable in all cases of apparent bias, whether concerned with justices, members of inferior tribunals, jurors or with arbitrators, is whether, having regard to the relevant circumstances, there is a real possibility of bias on the part of the relevant member of the tribunal in question, in the sense that he might unfairly regard with favour, or disfavour, the case of a party to the issue under consideration by him. In considering this question all the circumstances which have a bearing on the suggestion that the judge or justice is biased must be considered. The question is whether a fair minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased. Cases may occur where all the justices may be affected by an appearance of bias, as, for instance, where a fellow justice or the justices' clerk is charged with an offence; where this occurs, it has been recommended that justices from another petty- sessional division should deal with the case, or, if the offence is indictable, that it should be committed for trial by a jury. It is because the court in the majority of cases does not inquire whether actual bias exists that the maxim that justice must not only be done but be seen to be done is applied, and the court gives effect to the maxim by examining all the material available and concluding whether there is a real possibility of bias....."

45. In the light of the above, we shall now consider whether the petitioner can invoke the rule of bias and seek invalidation of order dated 24.4.2011 and other proceedings held by the Committee on the ground that respondent No.3 is biased and prejudiced against him and as such he could not have been made as a member of the Committee under Section 3(2) of the Act. It is not in dispute that respondent No.3 participated in the seminar organised by the Bar Association of India of which he was Vice-President. He demanded public inquiry into the charges levelled against the petitioner before his elevation as a Judge of this Court. During the seminar, many eminent advocates spoke against the proposed elevation of the petitioner on the ground that there were serious allegations against him. Thereafter, respondent No.3 drafted a resolution opposing elevation of the petitioner as a Judge of this Court. He along with other eminent lawyers met the then Chief Justice of India. These facts could give rise to reasonable apprehension in the mind of an intelligent person that respondent No.3 was likely to be biased. A reasonable, objective and informed person may say that respondent No.3 would not have opposed elevation of the petitioner if he was not satisfied that there was some substance in the allegations levelled against him. It is true that the Judges and lawyers are

trained to be objective and have the capacity to decipher grain from the chaff, truth from the falsehood and we have no doubt that respondent No.3 possesses these qualities. We also agree with the Committee that objection by both sides perhaps "alone apart from anything else is sufficient to confirm his impartiality". However, the issue of bias of respondent No.3 has not to be seen from the view point of this Court or for that matter the Committee. It has to be seen from the angle of a reasonable, objective and informed person. What opinion he would form! It is his apprehension which is of paramount importance. From the facts narrated in the earlier part of the judgment it can be said that petitioner's apprehension of likelihood of bias against respondent No.3 is reasonable and not fanciful, though, in fact, he may not be biased.

46. The next question which merits consideration is whether order passed by the Committee on 24.4.2011 should be quashed on the ground of reasonable likelihood of bias of respondent No.3. While deciding this issue, we have to keep in mind that the petitioner is not a layperson. He is well-versed in law and possesses a legally trained mind. Further, for the last 15 years, the petitioner has held constitutional posts of a Judge and then as Chief Justice of the High Court. It is not the pleaded case of the petitioner that he had no knowledge about the seminar organized by the Bar Association of India on 28.11.2009 which was attended by eminent advocates including two former Attorney Generals and in which respondent No.3 made a speech opposing his elevation to this Court and also drafted resolution for the said purpose. The proceedings of the seminar received wide publicity in the print and electronic media. Therefore, it can be said that much before constitution of the Committee, the petitioner had become aware of the fact that respondent No.3, who, as per the petitioner's own version, had appreciated his work on the Bench and had sent congratulatory message when his name was cleared by the Collegium for elevation to this Court, had participated in the seminar and made speech opposing his elevation and also drafted resolution for the said purpose. The Chairman had appointed respondent No.3 as member of the Committee keeping in view his long experience as an eminent advocate and expertise in the field of constitutional law. The constitution of the Committee was notified in the Official Gazette dated 15.1.2010 and was widely publicised by almost all newspapers. Therefore, it can reasonably be presumed that the petitioner had become aware about the constitution of the Committee, which included respondent No.3, in the month of January, 2010. In his representation dated 12.5.2010, the petitioner claimed that he came to know about the constitution and composition of the Committee through the print and electronic media. Thus, at least on 12.5.2010 he was very much aware that respondent No.3 had been appointed as a member of the Committee. Notwithstanding this, he did not raise any objection apparently because after meeting respondent No.3 on 6.12.2009 at the latter's residence, the petitioner felt satisfied that the said respondent had nothing against him. Therefore, belated plea taken by the petitioner that by virtue of his active participation in the meeting held by the Bar Association of India, respondent No.3 will be deemed to be biased against him does not merit acceptance. It is also significant to note that respondent No.3 had nothing personal against the petitioner. He had taken part in the seminar as Vice-President of the Association. The concern shown by senior members of the Bar including respondent No.3 in the matter of elevation of the petitioner, who is alleged to have misused his position as a Judge and as Chief Justice of the High Court for material gains was not actuated by ulterior motive. They genuinely felt that the allegations made against the petitioner need investigation. After the seminar, respondent No.3 is not shown to have done anything which may give slightest impression to any person of reasonable prudence that

he was ill-disposed against the petitioner. Rather, as per the petitioner's own statement, he had met respondent No.3 at the latter's residence on 6.12.2009 and was convinced that the latter had nothing against him. This being the position, it is not possible to entertain the petitioner's plea that constitution of the Committee should be declared nullity on the ground that respondent No.3 is biased against him and order dated 24.4.2011 be quashed.

47. The issue deserves to be considered from another angle. Admittedly, the petitioner raised the plea of bias only after receiving notice dated 16.3.2011 which was accompanied by statement of charges and the lists of documents and witnesses. The petitioner's knowledgeful silence in this regard for a period of almost ten months militates against the bona fides of his objection to the appointment of respondent No.3 as member of the Committee. A person on the petitioner's standing can be presumed to be aware of his right to raise an objection. If the petitioner had slightest apprehension that respondent No.3 had pre-judged his guilt or he was otherwise biased, then, he would have on the first available opportunity objected to his appointment as member of the Committee. The petitioner could have done so immediately after publication of notification dated 15.1.2010. He could have represented to the Chairman that investigation by a Committee of which respondent No.3 was a member will not be fair and impartial because the former had already presumed him to be guilty. We cannot predicate the result of the representation but such representation would have given an opportunity to the Chairman to consider the grievance made by the petitioner and take appropriate decision as he had done in March, 2010 when respondent No.3 had sought recusal from the Committee in the wake of demand made by a section of the Bar which had erroneously assumed that the petitioner had consulted respondent No.3. However, the fact of the matter is that the petitioner never thought that respondent No.3 was prejudiced or ill-disposed against him and this is the reason why he did not raise objection till April, 2011 against the inclusion of respondent No.3 in the Committee. This leads to an irresistible inference that the petitioner had waived his right to object to the appointment of respondent No.3 as member of the Committee. The right available to the petitioner to object to the appointment of respondent No.3 in the Committee was personal to him and it was always open to him to waive the same.

48. In Lachhu Mal v. Radhey Shyam, AIR 1971 SC 2213, the Court considered the question whether the landlord can by way of agreement waive the exemption available to him under U.P. (Temporary) Control of Rent and Eviction Act, 1947. In that case, the landlord had entered into an agreement waiving the exemption available to him under the Act. While dealing with the issue of waiver, this Court held:

> "The general principle is that every one has a right to waive and to agree to waive the advantage of a law or rule made solely for the benefit and protection of the individual in his private capacity which may be dispensed with without infringing any public right or public policy. Thus the maxim which sanctions the non-observance of the statutory provision is cuilibet licet renuntiare juri pro se introducto. (See Maxwell on Interpretation of Statutes, Eleventh Edn., pp. 375 and 376). If there is any express prohibition against contracting out of a statute in it then no question can arise of any one entering into a contract which is so prohibited but where there is no such prohibition it will have to be seen whether an Act is intended to have a more

extensive operation as a matter of public policy. In Halsbury's Laws of England, Vol. 8, Third Edn., it is stated in para 248 at p. 143:

"As a general rule, any person can enter into a binding contract to waive the benefits conferred upon him by an Act of Parliament, or, as it is said, can contract himself out of the Act, unless it can be shown that such an agreement is in the circumstances of the particular case contrary to public policy. Statutory conditions may, however, be imposed in such terms that they cannot be waived by agreement, and, in certain circumstances, the legislature has expressly provided that any such agreement shall be void."

(emphasis supplied)

49. In Manak Lal v. Dr. Prem Chand Singhvi (supra), this Court held that the constitution of the Tribunal was vitiated due to bias because Chairman of the Tribunal had appeared against the appellant in a case but declined to nullify the action taken against him on the recommendations of the Tribunal on the ground that he will be deemed to have waived the right to raise objection of bias. Some of the observations made in that case are extracted below:

".....The alleged bias in a member of the Tribunal does not render the proceedings invalid if it is shown that the objection against the presence of the member in question had not been taken by the party even though the party knew about the circumstances giving rise to the allegations about the alleged bias and was aware of his right to challenge the presence of the member in the Tribunal. It is true that waiver cannot always and in every case be inferred merely from the failure of the party to take the objection. Waiver can be inferred only if and after it is shown that the party knew about the relevant facts and was aware of his right to take the objection in question. As Sir John Romilly, M.R., has observed in Vyvyan v. Vyvyan "waiver or acquiescence, like election, presupposes that the person to be bound is fully cognizant of his rights, and, that being so, he neglects to enforce them, or chooses one benefit instead of another, either, but not both, of which he might claim". If, in the present case, it appears that the appellant knew all the facts about the alleged disability of Shri Chhangani and was also aware that he could effectively request the learned Chief Justice to nominate some other member instead of Shri Chhangani and yet did not adopt that course, it may well be that he deliberately took a chance to obtain a report in his favour from the Tribunal and when he came to know that the report had gone against him he thought better of his rights and raised this point before the High Court for the first time. In other words, though the point of law raised by Shri Daphtary against the competence of the Tribunal be sound, it is still necessary for us to consider whether the appellant was precluded from raising this point before the High Court by waiver or acquiescence.

From the record it is clear that the appellant never raised this point before the Tribunal and the manner in which this point was raised by him even before the High

> Court is somewhat significant. The first ground of objection filed by the appellant against the Tribunal's report was that Shri Chhangani had pecuniary and personal interest in the complainant Dr Prem Chand. The learned Judges of the High Court have found that the allegations about the pecuniary interest of Shri Chhangani in the present proceedings are wholly unfounded and this finding has not been challenged before us by Shri Daphtary. The learned Judges of the High Court have also found that the objection was raised by the appellant before them only to obtain an order for a fresh enquiry and thus gain time. It may be conceded in favour of Shri Daphtary that the judgment of the High Court does not in terms find against the appellant on the ground of waiver though that no doubt appears to be the substance of their conclusion. We have, however, heard Shri Daphtary's case on the question of waiver and we have no hesitation in reaching the conclusion that the appellant waived his objection deliberately and cannot now be allowed to raise it."

(emphasis supplied)

50. In Dhirendra Nath Gorai v. Sudhir Chandra AIR 1964 SC 1300, a three Judge Bench of this Court considered the question whether the sale made without complying with Section 35 of the Code of the Bengal Money Lenders Act, 1940 was nullity and whether the objection against the violation of that section could be waived. After examining the relevant provisions, the Court held:

> "A waiver is an intentional relinquishment of a known right, but obviously an objection to jurisdiction cannot be waived, for consent cannot give a court jurisdiction where there is none. Even if there is inherent jurisdiction, certain provisions cannot be waived. Maxwell in his book "On the Interpretation of Statutes", 11th Edn., a p. 357, describes the rule thus:
>
> "Another maxim which sanctions the non-observance of a statutory provision is that cuilibet licet renuntiare juri pro se introducto. Everyone has a right to waive and to agree to waive the advantage of a law or rule made solely for the benefit and protection of the individual in his private capacity, which may be dispensed with without infringing any public right or public policy".

The same rule is restated in "Craies on Statute Law", 6th Edn., at p. 269, thus:

> "As a general rule, the conditions imposed by statutes which authorise legal proceedings are treated as being indispensable to giving the court jurisdiction. But if it appears that the statutory conditions were inserted by the legislature simply for the security or benefit of the parties to the action themselves, and that no public interests are involved, such conditions will not be considered as indispensable, and either party may waive them without affecting the jurisdiction of the court."

51. In conclusion, we hold that belated raising of objection against inclusion of respondent No.3 in the Committee under Section 3(2) appears to be a calculated move on the petitioner's part. He is an

intelligent person and knows that in terms of Rule 9(2)(c) of the Judges (Inquiry) Rules, 1969, the Presiding Officer of the Committee is required to forward the report to the Chairman within a period of three months from the date the charges framed under Section 3(3) of the Act were served upon him. Therefore, he wants to adopt every possible tactic to delay the submission of report which may in all probability compel the Committee to make a request to the Chairman to extend the time in terms of proviso to Rule 9(2)(c). This Court or, for that reason, no Court can render assistance to the petitioner in a petition filed with the sole object of delaying finalisation of the inquiry.

52. However, keeping in view our finding on the issue of bias, we would request the Chairman to nominate another distinguished jurist in place of respondent No.3. The proceedings initiated against the petitioner have progressed only to the stage of framing of charges and the Committee is yet to record its findings on the charges and submit report. Therefore, nomination of another jurist will not hamper the proceedings of the Committee and the reconstituted Committee shall be entitled to proceed on the charges already framed against the petitioner.

53. In the result, the writ petition is dismissed with the aforesaid observations.

.....J. [G.S. Singhvi] .....J. [Chandramauli Kumar Prasad] New Delhi July 05, 2011.