M. Krishna Swami vs Union Of India & Ors on 27 August, 1992

Equivalent citations: AIR 1993 SUPREME COURT 1407, 1992 (4) SCC 605, (1992) 4 SCR 53 (SC), 1993 (1) UJ (SC) 314, (1992) 5 JT 92 (SC), (1992) 3 SCJ 599, (1992) 7 SERVLR 547

Bench: J.S. Verma, N.M. Kasliwal, K. Ramaswamy

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           CASE NO.:
Writ Petition (civil)  149 of 1992

PETITIONER:
M. KRISHNA SWAMI

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT: 27/08/1992

BENCH:
J.S. VERMA & N.M. KASLIWAL & K. RAMASWAMY & K. JAYACHANDRA REDDY AND S.C.
AGRAWAL

JUDGMENT:
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JUDGMENT AIR 1993 SC 1407 WITH Writ Pet.(C) 140 of 1992 Raj Kanwar, Advocate, Petitioner v. Union of India and Another, Respondents.

VERMA, J. (for himself and N. M. Kasliwal, K. Jayachandra Reddy and S. C. Agrawal, JJ.):- Both these writ petitions under Article 32 of the Constitution were heard together and are disposed of by this common judgment since they involve for decision substantially the same points. In Writ Petition No. 149 of 1992, the petitioner M. Krishna Swami is a member of the Tenth Lok Sabha from Tamil Nadu while in Writ Petition No. 140 of 1992, the petitioner Raj Kanwar is an advocate of District Karnal in Haryana. Both these petitions are stated to have been filed in public interest and relate to the proceedings for the removal from office of Mr. Justice V. Ramaswami of the Supreme Court of India initiated by the notice of motion given to the Speaker by 108 members of the Ninth Lok Sabha. It is unnecessary to state further facts herein and it would suffice to say that both these petitions are a sequel to the decision in Sub-Committee on Judicial Accountability v. Union of India, (1991) 4 SCC 699 : (1991 AIR SCW 3049) -and were filed prior to Writ Petition No. 514 of 1992 (reported in 1992 AIR SCW 2683) - Mrs. Sarojini Ramaswami v. Union of India - which has been disposed of by us earlier today by a separate judgment pronounced therein giving all relevant facts.

2. Petitioner Raj Kanwar (in Writ Petition No. 140 of 1992) alleges that the notice of motion by 108 members of the Ninth Lok Sabha, its admission by the then Speaker of Lok Sabha and constitution of the Inquiry Committee under S.3(2) of the Judges (Inquiry) Act, 1968 are unconstitutional being violative of Art. 124(4) of the Constitution. It is also asserted in that Writ Petition that the judgment

in Sub-Committee on Judicial Accountability is violative of Art. 145(3) of the Constitution and hence void ab initio. On this basis, the relief sought in Writ Petition No. 140 of 1992 is as under :-

> "a) issue appropriate writ, order or direction quashing (1) the notice of motion for presentation of an address to the President for the removal of Mr. Justice V. Ramaswami of the Supreme Court of India;
>
> (2) its admission by the then Speaker of Lok Sabha; and (3) the formation of the Inquiry Committee under the Judges (Inquiry) Act, 1968 as being void ab initio."

3. In Writ Petition No. 149 of 1992, the petitioner M. Krishna Swami claims sufficient interest to file the writ petition as a member of the Tenth Lok Sabha and as an advocate of Madras known to Mr. Justice V. Ramaswami for long. In this petition, it is alleged that certain illegalities in the procedure adopted by the Inquiry Committee prejudicial to Mr. Justice V. Ramaswami have rendered the inquiry invalid. On the basis of the illegalities in procedure, alleged in the petition, the relief sought is for quashing the proceedings of the Committee as invalid. This is the alternative prayer in the petition while the primary relief claimed in the petition is substantially the same as in the other petition to quash the notice of motion admitted by the Speaker of the Ninth Lok Sabha and the charges framed by the Committee against Mr. Justice V. Ramaswami. Another prayer made to hold that the Inquiry Committee is disqualified to conduct the inquiry was given up at the hearing by Shri Sibal accepting the position that the allegation of bias against the Committee could be examined only at the instance of Mr. Justice V. Ramaswami who is not even a party in either of these two writ petitions. In substance, the primary relief claimed in both these writ petitions is for reconsideration of the earlier Constitution Bench decision in Sub-Committee on Judicial Accountability, (1991 AIR SCW 3049) and for accepting the view expressly rejected in the majority opinion therein. In Writ Petition No. 149 of 1992, the alternative prayer for quashing the proceedings of the Inquiry Committee on the ground of illegality in the procedure adopted by it for conducting the inquiry is alleged to be based on the decision in Sub- Committee on Judicial Accountability which held that the proceeding relating to inquiry conducted by the Committee is statutory in nature subject to judicial review.

4. Subsequently, on conclusion of the investigation by the Inquiry Committee, Smt. Sarojini Ramaswami, wife of Mr. Justice V. Ramaswami, filed Writ Petition No. 514 of 1992 (reported in 1992 AIR SCW 2683), praying for a direction to the Inquiry Committee to supply a copy of its report to Mr. Justice V. Ramaswami before submitting it to the Speaker under S. 4(2) of the Judges (Inquiry) Act, 1968 to enable the learned Judge to seek judicial review of the finding of 'guilty', if any, against him made in the report of the Committee. We have disposed of that writ petition by a separate judgment pronounced earlier today. We are, therefore, confining the decision of these petitions only to the points raised herein which survive for decision.

5. We had concluded the hearing of these writ petitions before the hearing was commenced in Writ Petition No. 514 of 1992, but at the request of Shri Kapil Sibal, senior counsel appearing for the petitioner in Writ Petition No. 149 as well as in Writ Petition No. 514, we deferred the decision in these writ petitions till now. In Writ Petition No. 149, we have heard Shri Kapil Sibal for the

petitioner, the Attorney General of India for the Union of India and Shri F. S. Nariman for the Inquiry Committee. In addition, we have also heard Shri Shanti Bhushan and Shri Jitendra Sharma who represented the interveners viz. Sub-Committee on Judicial Accountability and Supreme Court Bar Association. Raj Kanwar, petitioner in Writ Petition No. 140 of 1992 was directed to file the written submissions which have been considered by us. We considered it unnecessary to hear petitioner Raj Kanwar orally also in addition to his written submissions since his case is the same which was urged by Shri Kapil Sibal as one of his contentions and to some extent advanced also by the Attorney General of India. The constraint of time because of which the hearing in these matters was required to be concluded early impelled us to adopt this course, particularly on account of the fact that Writ Petition No. 140 of 1992 was tagged on to Writ Petition No. 149 to be heard along with Writ Petition No. 149 of 1992 which was treated as the main matter by order dated 23-3-1992.

6. It may now be mentioned that Writ Petition No. 149 of 1992 came up for hearing first before a Division Bench of three learned Judges which by its order dated 27-2-1992 on hearing Shri Kapil Sibal for the petitioner mentioned his contentions and directed as under ((1992) 2 JT (SC) 63 para

2) :-

> "Having regard to the importance of the questions raised in the petition, we direct the Registry to place the papers before the learned Chief Justice of India for constituting a Constitution Bench to hear this petition."

These contentions were mainly for reconsideration of the earlier Constitution Bench decision in Sub-Committee on Judicial Accountability, (AIR 1991 SC 3049). This order is reported in (1992) 2 JT (SC) 63. This is how this petition came to be listed before a Constitution Bench for being heard by us. The order in Writ Petition No. 140 of 1992 for tagging with Writ Petition No. 149 of 1992 was made thereafter on 23-3-1992 because of the identity of subject matter of the two petitions.

7. When the hearing commenced before us, the question of maintainability of these writ petitions for the reliefs claimed herein in the absence of Mr. Justice V. Ramaswami and tenability of the plea of reconsideration of the earlier decision at the instance of these petitioners who were not parties thereto and are not directly affected thereby arose for consideration. On 6-5-1992 after Shri Kapil Sibal, learned senior counsel for the petitioner had been heard for some time on the preliminary question relating to maintainability of the petition, he sought time 'to consider further whether the petitioner should move an application for impleading Mr. Justice V. Ramaswami as a party'. The matters were adjourned to the next day at the request of Shri Sibal. On 7-5-1992, Shri Sibal informed us that the petitioner does not want to implead Mr. Justice V. Ramaswami as a party and that he had decided to pursue the writ petition as framed in its present form. In the other writ petition (W.P. No. 140) also, Mr. Justice V. Ramaswami is not a party and the. petitioner's stand is the same; and, therefore, the question of maintainability of these writ petitions for the reliefs claimed herein in the absence of Mr. Justice V. Ramaswami as party is common to both of them. These matters were, therefore, heard on the question of maintainability indicating that in case these petitions are held to be maintainable for the reliefs claimed herein in the absence of Mr. Justice V. Ramaswami as a party, then the matters may be heard further on merits.

8. We have reached the conclusion that both these petitions must be dismissed on this preliminary ground and, therefore, the question of hearing these petitions further does not arise.

9. In view of the fact that the petitioners in both these writ petitions have persisted in pursuing the writ petitions without impleading Mr. Justice V. Ramaswami as a party, in spite of ample opportunity given by us for the purpose at the commencement of the hearing and even thereafter till its conclusion, there is now no question of giving any further opportunity to the petitioners for this purpose. Shri Sibal took the definite stand on instructions of the petitioner that Mr. Justice V. Ramaswami would not be impleaded as a party in the writ petition and that the Court itself may give him notice if it so desires. We do not find any reason why the Court should suo motu issue notice to Mr. Justice V. Ramaswami when the petitioner persisted in not impleading him even though the reliefs claimed are for the benefit of the learned Judge alone. Even otherwise we do not consider it appropriate to examine any of the questions raised in these petitions at the instance of these petitioners in view of our decision in Writ Petition No. 514 of 1992 (reported in 1992 AIR SCW 2683), the learned Judge himself having not chosen to do so.

10. There can be no doubt and it is rightly not disputed that the decision on merits of the points raised in these writ petitions, assuming they could be considered and decided on merits in these circumstances, would directly affect the interest of Mr. Justice V. Ramaswami in the proceedings for his removal from office which he is facing. In case the decision on merits is adverse to the interest of Mr. Justice V. Ramaswami, it would be open to him to contend that he is not bound by the decision to which he is not a party irrespective of the merit of that contention. Moreover, there appears to be no cogent reason to examine the merits of the points raised in the petitions professedly for the benefit of Mr. Justice V. Ramaswami when the learned Judge himself has not chosen to raise the same.

11. It was strenuously urged by Shri Sibal, supported by the learned Attorney General, as well as the petitioner Raj Kanwar that declaration of law on the subject can be made in the absence of the learned Judge as a party with which declaration he would be bound; and that in view of the high office held by the learned Judge, it was consistent with the dignity of that office that he should not be a petitioner or even a party in a case filed in the Court in which he himself is a Judge. We are unable to appreciate or accept this argument.

12. The points raised in these petitions in the context of Clauses (4) and (5) of Art. 124 of the Constitution and the law enacted under Art. 124(5) are bound to arise only in the context of a holder of the high office of a Judge of the Supreme Court or a High Court and at a time when he faces proceedings for his removal so that the decision thereon is bound to affect the interest of the concerned Judge. If the occasion for requiring a judicial adjudication arises in this context at a time when a particular Judge is facing proceedings for his removal from office as in the present case, the reason advanced by learned counsel for not even impleading him as a party in the petition appears to be tenuous, Anyone facing such a proceeding and wanting to challenge it has to do it himself. It is not possible to predict the outcome of the decision on merits of the points raised in these petitions and, therefore, the likelihood of a conclusion adverse to the interest of the learned Judge being a possibility, an effective adjudication of the same in his absence is not feasible which alone is a

sufficient reason to decline consideration of the points raised in the petitions in these circumstances. We may mention that the learned Judge was a party in the earlier proceedings sub-Committee on Judicial Accountability v. Union of India, (1991) 4 SCC 699: (1991 AIR SCW 3049).

13. Shri Sibal submitted that the, order dated 27-2-1992 by a Division Bench directing that the papers be placed before the learned Chief Justice of India for constituting a Constitution Bench to hear this petition after mentioning the contentions of Shri Sibal requires that we must decide those contentions on merits and we cannot dispose of the writ petition on this preliminary point without going into the merits of those contentions. Without expressly saying so, the suggestion of Shri Sibal is that we have no option in the matter in view of the aforesaid order dated 27-2-1992 by a Division Bench except to decide these contentions on merits. We may here mention that the contentions of Shri Sibal mentioned in the order dated 27-2-1992 are mainly for reconsideration of the decision in Sub-Committee on Judicial Accountability and amount to reagitating the very same points which were considered and rejected by majority in the earlier Constitution Bench decision. Apart from the question whether reconsideration of that decision can be sought in this manner, we have no doubt that the order dated 27-2-1992 made by the Division Bench could not bind even that Bench much less a larger Bench in the manner suggested by Shri Sibal when the reference to a Constitution Bench is to hear the petition as a whole and not merely decide certain quetions of law without even issuing Rule. In our opinion, the course we have adopted was available to that Division Bench itself even after making the order dated 27-2-1992 if it had heard the matter thereafter instead of referring the petition for hearing by a Constitution Bench. This contention does not merit any further consideration.

14. The two main preliminary points which arise in these petitions are :

(1) Tenability of the plea for reconsideration of the decision in Sub-

Committee on Judicial Accountability v. Union of India, (1991) 4 SCC 699 :

(1991 AIR SCW 3049) - at the instance of the petitioners; and (2) Maintainability of the petitions for reliefs claimed for the benefit' of Mr. Justice V. Ramaswami without impleading him as a party.

15. We have already indicated the impropriety of considering and deciding the question of grant of reliefs claimed in the petitions for the benefit of Mr. Justice V. Ramaswami in his absence even as a party. Ordinarily, it is the person aggrieved and directly affected who must seek the relief himself unless disabled from doing so for a good reason which permits someone else to seek the relief on his behalf. In that situation also the claim is made in substance by the person affected even though the form be different and it is so stated expressly. The only reason given for the learned Judge not doing so, by Shri Sibal, has been considered by us earlier and not found sufficient to support his submission. We may also mention that in a similar situation Mr. Justice Murphy of the High Court of Australia, the apex Court of that country, while facing proceedings for his removal from office, had brought an action for injunction to restrain the proceedings against him in his own name. The judgment of the High Court of Australia in that matter is Murphy v. Lush, (1986) 65 ALR 651. That

case is referred only to indicate that the grievance in a similar situation was made by the concerned Judge of the apex Court himself and not by someone else even without impleading him. We may also add that subsequently in Writ Petition No. 514 of 1992 (reported in 1992 AIR SCW 2683), the petition was filed by the wife of the learned Judge wherein the learned Judge gave a writing to the effect that the writ petition was in substance for and on his behalf with the decision in which he would be bound. There is nothing on record in these petitions to indicate a similar stand by the learned Judge: Moreover, if the subsequent writ petition for his benefit is filed by his wife in this manner, there is no reason why the learned Judge would not adopt the same method to raise the points involved in these petitions, if he was so advised.

16. The plea for reconsideration of the earlier judgment in Sub-Committee on Judicial Accountability (1991 AIR SCW 3049) at the instance of the present petitioners is made placing strong reliance on A. R. Antulay v. R. S. Nayak, (1988) 2 SCC 602 : (AIR 1988 SC 1531). In our opinion, the decision in Antulay is of no assistance to the petitioner in the present case. In the first place, it is not the learned Judge Mr. Justice v. Ramaswami who has asked for reconsideration of that decision, assuming he could do so by a petition under Art.32 of the Constitution instead of by a review petition, since Mr. Justice V. Ramaswami was a party in that matter. On the other hand, it was Antulay himself who had challenged by a petition under Art.32 the decision rendered against him by this Court. In addition, the settled principles for reconsideration of a decision which have been once again reiterated in Union of India v. Raghubir Singh (Dead) by Lrs., (198912 SCC 754: (AIR 1989 SC 1933) - clearly indicate that the plea for reconsideration is not to be entertained merely because the petitioner chooses to reagitate the points concluded by the earlier decision in Sub- Committee on Judicial Accountability (1991 AIR SCW 3049). In The Keshav Mills Co. Ltd. v. Commr. of Income-tax, Bombay North, (1965) 2 SCR 908 :

> (AIR 1965 SC 1636), It was pointed out that. interest of public good should be the guide and there must be compelling reasons for reconsideration of a decision of this Court for public good. We do not find any good much less public good being served in reopening those questions which are concluded by a decision of the Constitution Bench in Sub-Committee on Judicial Accountability particularly when the plea is not even made by the concerned Judge himself and the attempt to reagitate those points is related to the same learned Judge facing the same proceedings for his removal. Antulay's case (AIR 1988 SC 1531) is also distinguishable for the reason that therein the result of the earlier decision against him challenged by Antulay in the petition under Art.32 had the effect of conferring jurisdiction on a Court contrary to the specific statutory provision; and the error in the earlier judgment to this effect was considered to be sufficient for Antulay himself to challenge that decision by an independent writ petition instead of a review petition. Moreover, judgment of Mishra, J. as well as that of Mukharji, J. as their Lordships were then, give a clear indication that the decision therein was not intended to be a precedent and was confined to the peculiar facts and circumstances of that case. This distinction is sufficient to hold that Antulay does not permit these petitioners to claim reconsideration of the earlier decision in these circumstances.

17. Shri Sibal contended that the petitioners not being a party to the earlier decision in Sub-Committee on Judicial Accountability (1991 AIR SCW 3049),the remedy of review of that decision is not available to them. In bur opinion, this argument instead of supporting their claim for seeking reconsideration of the judgment actually negatives it. If they are not entitled to seek review as they were not parties in the earlier proceeding in which the judgment was rendered and the person directly affected remains the same learned Judge who was a party then but not now, these petitioners cannot have the right which they seek to assert when the context remains the same. Moreover, we deem it inappropriate to consider these questions at their instance in these circumstances.

18. The written submissions of petitioner Raj Kanwar are in substance no addition to the points urged by Shri Sibal and, therefore, do not require any separate consideration. We might, however, mention that petitioner Raj Kanwar persisted in claiming to be also heard orally in addition, which we refused for the given. We must add that the petitioner Raj Kanwar appears to be a busy body who has filed the petition for no ostensible public purpose. He has described himself as an advocate practising in the District of Karnal without indicating the reason for his persistence in repeating the same challenge in his individual capacity when Shri Kapil Sibal, Senior Advocate has argued at length the point he raises, on behalf of a Member of Parliament and Advocate of Madras claiming a personal relationship with the learned Judge for long and the Supreme Court Bar Association and the Sub- Committee on Judicial Accountability have appeared as interveners before us.

19. We would have refrained from making these observations but for the fact that petitioner Raj Kanwar after the conclusion of the hearing in which he was permitted to file written submissions which we have taken into account, chose to adopt the extraordinary course of an application to the Chief Justice of India to make the wholly unjustified grievance that he was not orally heard. As an advocate he should have known that such an application is untenable apart from being misconceived. He should have appreciated that public interest was served better by early conclusion of the hearing rather than its prolongation to enable every individual, who so desired, to address us orally. We are also of the opinion that in a matter of this kind, it was not only unnecessary but also inappropriate to permit the hearing being converted into a debate for participation of every individual in the name of public interest. We do not think that the persistence of Raj Kanwar is in public interest.

20. The view we are taking of the role of petitioner, Raj. Kanwar, in Writ Petition (Civil) No. 140 of 1992 is in consonance with the decision in S. P. Gupta v. Union of India, 1981 (Supp) SCC 87 : (AIR 1982 SC 149) wherein this aspect was considered at length. In his petition as well as in written submissions all that he said was to seek relief on merits on the points raised which are concluded by earlier Constitution Bench decision without even showing as to how he is entitled to make the claim. Later he added that the absence of the Judge is immaterial and the points be decided without any relief being granted to anyone.

21. The basis of the right claimed by the petitioner, Raj Kanwar, has to be found in some principle to amount to the right of the kind he claims. There is no special injury to him alleged and, therefore, the right he claims is no better than that available to every other advocate in the country. If the mere

membership of the Bar can provide the foundation for the right which Raj Kanwar asserts to maintain a separate petition then on principle every advocate in the country would be entitled to file a separate petition, and as he claims also entitled to be heard orally even though it may only be at best repetition of the same arguments which Shri Kapil Sibal, Senior Advocate advanced at length. Since it cannot be visualised that every Advocate as an individual can claim such a right in public interest, it cannot be doubted that the claim made by petitioner, Raj Kanwar to this effect and his insistence on being orally heard when he had nothing additional to contribute, as is evident from his petition and the written arguments, is clearly misconceived. It is necessary that this tendency is curbed in public interest to avoid wastage of courts' time and abuse of its process.

22. It is beneficial in this context to reproduce certain portions from the decision in S. P. Gupta (AIR 1982 SC 149). The opinion of Bhagwati, J. as he then was, on this aspect reflects the opinion of the Bench and he stated as under:

> "But we must be careful to see that the member of the public, who approaches the. Court in cases of this kind, is acting bona fide and not for personal gain or private profit or political motivation or other oblique consideration. The Court must not allow its process to be abused by politicians and others.....
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> xxx xxx xxx xxx Before we part with this general discussion in regard to locus staid, there is one point we would like to emphasise and It is, that cases may arise where there is undoubtedly public injury by the act or omission of the State or a public authority but such act or omission also causes a specific legal injury to an individual or to a specific class or group of individuals. In such cases, a member of the public having sufficient interest can certainly maintain an action challenging the legality of such act or omission, but if the person or specific class or group of persons who are primarily injured as a result of such act or omission, do not wish to claim any relief and accept such act or omission willingly and without protest, the member of the public who complains of a secondary public injury cannot maintain the action, for the effect of entertaining the action at the instance of such member of the public would be to foist a relief on the person or specific class or group of persons primarily injured, which they do not want."

(Paras 24, 25, pages 219-220) (of (Supp) SCC: (Paras 23-24, at p. 195 of AIR) xxx xxx xxx xxx xxx "We have taken a broad and liberal view in regard to locus standi and held that any public-spirited advocate acting bona fide and not for private gain or personal profit or political motivation or any other oblique consideration, may file a writ petition in the High Court challenging an unconstitutional or illegal action of the Government or any other constitutional authority prejudicially affecting the administration of justice and in such writ petition he may claim relief not for himself personally but for those who are the direct victims of such unconstitutional or illegal action, because granting such relief to them would repair the injury caused to administration of justice. But the persons for whom the relief is sought must be ready to .accept it; they must appear and make it known that they are claiming such relief; it cannot be thrust upon them unless they wish it.

xxx xxx xxx xxx The Court does not decide issues in the abstract. It undertakes determination of a controversy provided it is necessary in order to give relief to a party and if no relief can be given because none is sought, the Court cannot take upon itself a theoretical exercise merely or the purpose of deciding academic issues, howsoever important they may be, The court cannot embark upon an inquiry whether there was any misuse or abuse of power in a particular case, unless relief is sought by the person who is said to have been wronged by such misuse or abuse of power. The Court cannot take upon itself the role of a commission of inquiry - a knight errant roaming at will with a view to destroying evil wherever it is found." (Para 57, pp. 264-265) (of (Supp) SCC : (Para 56, at pp. 226-227 of AIR)

23. Venkataramiah, J. stated thus :

> "It has, however, to be made clear that it cannot be said that lawyers only because the have a right to practise in a court have 'locus standi' to file petitions in respect of every matter concerning judge, courts and administration of justice. There are many such matters in which they have no 'locus standi' to ask for relief .....
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> But for the active participation of these two persons, the petitions regarding reliefs concerning them individually would have probably become liable to be dismissed on the ground that the lawyers have no 'locus standi' to make these prayers." (Para 989, page 773) (of (Supp) SCC): (Para 974, at p. 571 of AIR) (Emphasis supplied)

24. In S. P. Gupta (AIR 1982 SC 149) while widening the 'locus standi' in matters of public interest, the limitations to prevent abuse of the process of court were also indicated and the case of only those judges was examined who were parties before the Court.

25. We have dealt with this aspect at some length and also referred to the decision in S. P. Gupta since in the present context it has become necessary to reiterate the same to disabuse the mind of persons, like Raj Kanwar, who insist that they have such a right in the abstract. Petitioner Raj Kanwar could have served the public interest better if he had assisted Shri Kapil Sibal in the main petition, assuming he had something additional to say. The assertion of petitioner Raj Kanwar that he has any such right in the abstract is misconceived.

26. Even though the hearing in these petitions had concluded before we heard Writ Petition No. 514 of 1992 (reported in 1992 AIR SCW 2683), yet we deferred the decision of these writ petitions till now on the express request made by Shri Kapil Sibal not to decide these matters before deciding Writ Petition No. 514 of 1992.

27. We add that on a reconsideration of the matter in the light of the exposition of law made by Brother K. Ramaswamy in his separate opinion circulated to us, we regret our inability to concur with him in the area of his disagreement. On the points decided by us, leaving open the points which do not arise at this stage for our consideration for the reasons we have given, preferring to follow the salutary practice of not deciding any question, much less a constitutional one, unless it is necessary to do so, we would prefer to reserve our opinion on the remaining questions for the occasion, if any,

in the future when they arise for decision.

28. For the aforesaid reasons, both these writ petitions fail and are dismissed on the above preliminary grounds without going into the points raised on merits herein which do not arise for consideration at the instance of the petitioners at this stage on the conclusion we have reached. In view of our conclusion to dismiss these writ petitions, it is unnecessary to decide the pending I.As., including those for impleadment, which are accordingly disposed of. No costs.

29. K. RAMASWAMY, J. :- (Minority view) I have had the benefit of reading the draft judgment proposed by my learned brother Verma, J. With all due regards and personal respect to my learned and esteemed brethren, it is my misfortune for my inability to tread their path. Therefore, I have chosen to plough my lone furrow, since the matter is of great significance and the questions to be decided bear wider significance.

30. The short sift of the facts pertinent to the points posed are that on February 27, 1991 a notice of motion signed by 108 members of the 9th Lok Sabha was presented to the Speaker to intiate proceedings against Hon'ble Mr. Justice Veeraswami Ramaswami, a sitting Judge of this Court, alleging commission of financial irregularities in the discharge of his administrative duties as Chief Justice of the Punjab and Haryana High Court. The Speaker admitted the motion on March 12, 1991 and constituted a Committee comprising of Sri Justice P. B. Sawant, a sitting Judge of this Court, as Presiding Officer and Sri Justice P. D. Desai, the Chief Justice of the Bombay High Court and Sri Justice O. Chinnappa Reddy, a retired Judge of this Court, a distinguished jurist as members under S. 3(2) of Judges (Enquiry) Act 41 of 1968 (for short 'the Act'). The 9th Lok Sabha was dissolved on March 13, 1991. The Sub-Committee on Judicial Accountability filed a writ petition in this Court under Art. 32 of the Constitution and a host of writ petitions ensued, which were disposed of by a Constitution Bench reported in the SubCommittee on Judicial Accountability v. Union of India (1991) 2 SCR 741: (1991 AIR SCW 1573), for short 'SCJA' in which this Court declared that the motion admitted by the Speaker of the 9th Lok Sabha is valid; his action under the Act is outside the Parliament, it did not lapse and directed the Union of India to notify his constituing the Committee under S. 3(2) of the Act. Pursuant thereto a notification was issued by the central Government. The Secretary to the Committee issued notice in Form I of the Judges (Enquiry) Rules, 1969 (for short 'the Rules) on January 14, 1992 communicating definite charges and requested Mr. Justice V. Ramaswami to put in his written statement of defence on or before February 4, 1992 and to appear either in person or through counsel on February 10, 1992 along with his evidence. At request, George Fernandoz, Jaswanth Singh, SCJA and the petitioner were permitted only to assist the Advocate of the Committee to prove the case against the Judge and to keep secrecy of the facts and the proceedings. The petitioner's insistence to prove the innocence of the Judge was not acceded to. So he filed the Writ Petition.

31. When the matter came up for admission before a Bench of three Judges on February 27, 1992 to which one of us (K. J. Reddy, J.) was a member, having heard the learned counsel Sri Sibal, formulated the following five questions, and having regard to the importance of those questions raised, referred the matter to the Constitution Bench. ((1992) 2 JT (SC) 63, Para

1) (1) Sub-sec. (1) of the Judges (Inquiry) Act, 1968, mandates that the Speaker of the House of People shall either admit or refuse to admit a motion for presenting an address to the President of India for the removal of a Judge of the Supreme Court of India only 'after' considering such materials, if any, as may be available to him and failure to comply with the said sine-qua-non, viz. consideration of available material before admitting the motion, vitiates his decision for non-application of mind. In the present case since the then Speaker, respondent No. 3 is not shown to have applied his mind to the available material before admitting the motion, his decision to admit the motion and constitute the Committee comprising respondents Nos. 4, 5 and 6 is unsustainable in law.

(2) Sub-sec. (2) of S. 3 of the Judges (Inquiry) Act, 1968, invests the Speaker with the power to constitute a Committee for the purpose of making an investigation into the grounds on which the removal of the Judge is sought, but such power must be exercised consistent with the established practice and norms and consistent with the idea of independence of judiciary, after consultation with the Chief Justice of India. In the present case all the three Committee members were directly approached by the Speaker, respondent No. 3, who thereby departed from the well established practice and hence the constitution in law of the Committee clearly vitiated in law.

(3) Although sub-sec. (1) of S. 4 of the Judges (Inquiry) Act empowers the Committee to regulate its own procedure in making the investigation, which procedure must be consistent with the rules of natural justice, the committee has not outlined any procedure for investigation and the procedure it has hitherto followed in framing charges without undertaking any preliminary investigation to ascertain if there is sufficient prima facie material for framing a charge and in refusing to provide the concerned Judge with copies of documents sought on unsustainable grounds and in permitting third parties to assist the Committee through its counsel against the Judge and in not permitting the petitioner to assist the Committee to establish the innocence of the Judge, the Committee has completely mutilated the 'sui juris' character of the investigation and thereby rendered the proceedings illegal and wholly inconsistent with the principles of natural justice.

(4) If the provisions of sub-secs. (3) and (4) of S. 3 are read to mean that they empower the Committee to frame charges without holding a preliminary investigation at which the concerned Judge may participate, the said two sub-sections would be rendered ultra vires Art. 124(5) of the Constitution.

(5) When the Constitution. Bench decided the case Sub-Committee on Judicial Accountability v. Union of India (1991) 4 SCC 699 : (1991 AIR SCW 3049) the proceeding which took place in the House of People were not before it, which proceedings now available, clearly indicate that the Speaker himself was alive to the fact that he was constitutionally obliged to place the notice before the House and his decision on the admission of the notice was to depend on the collective wisdom of the House.

In view of this factual aspect reflected in the proceedings of the House, the decision of the Constitution Bench needs reconsideration.

The Secretary of the Committee and the interveners exchanged their respective pleadings and placed evidence on record. We have had the benefit of the arguments of all the learned counsel and also requested them to give exhaustively written arguments on all points raised in the matter Accordingly they have done. I have given my anxious consideration to all the contentions and the materials placed in support thereof.

32. The substratum of the petitioner's pleas and ably argued by his learned Senior counsel, Sri Kapil Sibal are : that Sri Rabi Roy, the Hon'ble Speaker of the 9th Lok Sabha, the third respondent herein, did not have with him all the material matrix before admitting the motion to remove the Judge, nor applied his mind to the material to find prima facie case, which is a condition precedent under the Act and the Rules, to be consistent with Art. 124 of the Constitution of India. He should have conducted preliminary enquiry in that behalf. The record does not bear out any reason. Non-application of the mind or bereft of reasons smacked the exercise of jurisdiction by the Speaker to admit the motion and at any rate it is illegal. This court on the earlier occasion did not have the advantage of the record now available to deal with this aspect. The petitioner being a non-party is not bound by the Constitution Bench Judgment which requires fresh look in the light of the above material. The constitution of the Committee without consultation and nomination by the Chief Justice of India became illegal. The enquiry, not having been preceded by any investigation, is ultra vires of Art. 124(5) of the Constitution. If it is otherwise, sub- secs. (3) and (4) of S. 3, S. 4(1), etc. of the Act are ultra vires of Art. 124(4). He further contends that the Committee cannot be a Prosecutor and a Judge. Before framing definite charges, it has to conduct an investigation into the allegations after giving reasonable opportunity to the learned Judge. The Committee did not adopt that procedure. Instead, it framed charges which lack factual foundation nor are supported by unimpeachable evidence. There is dichotomy between investigation and enquiry. In the investigation, the committee, after giving reasonable opportunity to the Judge, was to find whether from the material the charges could be framed and if it finds in the negative, the need to conduct the enquiry does not arise and it should report accordingly to the Speaker who would drop further action. Only after the investigation, finding that there is prima facie material or evidence, definite charges shall be framed, followed by an enquiry conducted against the learned Judge after giving reasonable opportunity. The enquiry shall be confined only between the learned Judge and the committee. The Advocate appointed to assist the committee cannot proceed as if he is a prosecutor against the learned Judge. The committee did not inform the Judge before hand as to what procedure it seeks to follow in this matter. The committee committed manifest illegality in permitting Messrs. George Ferandez and Jaswanth Singh and the SCJA to participate as persecutors against the learned Judge. They have no locus standi either to participate or adduce evidence against the Judge. The specious plea of purity of judicial administration is an actuated pretence to malign the Judge. The evidence establishes that the advocate for the committee along with the advocates of the Members of Parliament and the SCJA had prior consultations and in fact tutored the witnesses before the proceedings commenced which is repugnant to the dignity of Judicial process impinging upon Art. 21 as an unfair procedure. The Committee itself cross- examined the witnesses that answered favourably to the Judge. On the basis of the material placed before the court, he argued that the evidence does not establish any of the charges levelled against the learned Judge. His conduct to attract Art. 124(4) of the Constitution and the Act as misbehaviour impinging upon the integrity of the learned Judge must be grave but not the trivial administrative lapses to initiate

proceedings for removal or an enquiry thereon. Diverse circumstances available before the committee would not establish any misbehaviour by the learned Judge. Sri Altemesh Rein, Advocate-intervener, contended that the alleged misbehaviour was committed while discharging his duties as Chief Justice of Punjab and Haryana High Court; as per Art. 217 (1)(C) on his elevation to this Court, they ceased to be of any relevance for an investigation under Art. 124(5), the Act and the Rules, the action does not touch upon his misbehaviour as a Judge of this Court which alone is germane. So the motion for removal and consequent enquiry are devoid of jurisdiction and authority of law.

33. Sri G. Ramaswamy, the learned Attorney General contends that the Union of India did not file any counter, nor is interested in taking any particular stand in the matter. As Attorney General, on notice, contends that in a public interest litigation the essential requirement is that the petitioner must be genuinely interested to seek declaration of public law. Only persons like busy body or actuated with malice, should have no locus standi. The petitioner, being an advocate and a Member of Parliament, gets sufficient interest to maintain the writ petition. The omission to implead the learned Judge, though ideal to have him impleaded, does not become an handicap to declare the law which would bind the learned Judge as well. But the relative merits of the dispute personal to the learned Judge should not be considered, nor be given relief. For example in respect of the relief by the petitioner concerning the alleged bias by the committee, the writ petition is not maintainable at his behest. The procedure for investigation and proof of misbehaviour under Art. 144(5) of the Constitution Ss. 4(l) and 3(3) of the Act are distinct and different. The former refers to inquisitorial and the later partakes of adversorial. S. 3(3) of the Act occupies the field of adversary process whereas S.4(l) encompasses both.

> "Investigation" acquired distinct connotation under Item 8 of the List I of 7th schedule to collect evidence to facilitate enquiry or trial. In support thereof he placed reliance on the provisions in the Code of Criminal Procedure. During the investigation the authority is empowered, without predisposition, to sift the evidence and the enquiry confines to the field of proof of the charge for the determination of the guilt or innocence and to record a finding in that behalf. This would be done as an independent Tribunal or as Court after giving opportunity to the contending parties to adduce evidence. Its endeavour is to bring out the truth and not to bolster up the case The counsel for the tribunal has no role to play in proof of misbehaviour against the Judge. There can be neither a counsel for nor witnesses of the Committee. It is enjoined to adjudicate the credibility of evidence and reach its conclusions of guilt or innocence but not to act as prosecutor to prove the case against the Judge. The correctness of the procedure adapted by the Committee hinges upon the declaration of law in this behalf by this court for which the learned Judge is neither a necessary, nor a proper party. Even otherwise in his absence also the declaration would be given which binds him. No third party other than the learned Judge and the advocate appointed under S.3(9) of the Act has a right to participate or adduce evidence during the investigation and enquiry done by the committee. The decision in SCJA case requires reconsideration. Even otherwise the declaratory reliefs of public law could be made by this court.

34. Sri Nariman, the learned Senior Counsel appearing for the Committee with equal ability fairly contended that the petitioner has neither locus standi nor the writ petition maintainable to review the earlier decision. The motion for removal of the learned Judge is a political process. Though the Speaker is a statutory authority, he does not act like a judicial or administrative authority to record reasons before admitting the motion. He is a constitutional functionary of high authority. The fact that he admitted the motion does indicate that he had applied his mind and found prima facie grounds to admit the motion for removal of the learned Judge. Accordingly, he admitted the motion and constituted the committee. It is neither necessary for him to make prior investigation nor give notice to the Judge. It is not mandatory that he should consult the Chief Justice of India. It is his discretion. The constitution of the committee without consulting the Chief Justice of India is not illegal. The committee is not required to make investigation before framing definite charges. The committee is to consider the record sent by the Speaker and if it found prima facie evidence or material to frame definite charge or charges, it would be open to the committee to do so and issue notice in Form I to the learned Judge. Before framing the charges, the learned Judge is not entitled to any notice or opportunity. Only after communication of the charges in Form I, the learned Judge is entitled to submit his written statement of defence and also his adducing evidence in support thereof. He is also entitled to legal assistance as well as to be heard. Investigation and enquiry contemplated under the Act and the Rules is overlapping and synonymous. Even if the learned Judge opts to remain ex parte, the committee is obligated to conduct the enquiry into the definite charges and the Advocate be appointed to assist the committee to prove the charges framed against the learned Judge by adducing evidence. The committee consists of eminent members having long judicial experience an impeccable integrity and erudite. The proceedings before the committee are in the nature of a trial of a civil suit in which the learned Judge or his counsel and the Advocate alone are entitled to participate and lead evidence. Permission to third party to participate in the proceedings flows from the discretion of the committee to adopt its own procedure and in exercise thereof limited right to participate in the enquiry was given to third parties. The committee has to submit its report recording finding/ findings whether or not the charge or charges has/have been .proved. If the committee finds that charges have been proved, then the political process under Art. 124(4) again would revive. If the committee finds that the charges have not been proved, then the Speaker has to drop the proceedings in terms of the Act and the Rules. The petitioner cannot seek the reliefs asked for in the writ petition. The Judge alone is entitled to impugne the proceedings or claim for reasonable opportunity. Since the learned Judge opted to remain ex parte, the petitioner cannot challenge the proceedings since any adverse findings given by this court would not bind the Judge as he is not eo nomine party to the writ petition. He also further contended that neither the decision in SCJA case (1991 AIR SCW 1573) is open to be reviewed nor the petitioner has locus to do so. Sri Jitendra Sharma, Secretary of the Supreme Court Bar Association adopted the contentions of Sri Nariman. Sri Shanti Bhushan, the learned Senior counsel for SCJA, while supporting Sri Nariman, further argued with usual vehemence that they are bona fide interested to uphold the dignity of the court and the efficacy of the rule of law; they are also interested that the learned Judge should come out unscathed at the earliest; their locus was upheld by this court, and they are interested to bring on record the true and correct facts. The permission granted by the Committee is not illegal. The members of the Parliament having moved the motion are interested to prove the allegations.

35. The main question that needs adjudication is whether the petitioner has locus to maintain the writ petition. Indisputably, the petitioner is an advocate of Madras High Court Bar and he is also a Member of the Parliament. Therefore, it cannot be said that he is a pro bona publics. His genuine interest to uphold the dignity of the judiciary is not doubted. The petitioner sought time to implead the learned Judge as a party respondent to the writ petition. But ultimately, it was given up. By itself it would not detract, if the relief/reliefs otherwise would be considered and given. The facts present interpretation of the constitution, the scope of the Speaker's power to admit the motion to remove a Judge, his dignity coupled with the independence of the judiciary, the pivotal organ of the State. Some of the questions raised are of far-reaching importance. As a member of the Bar, he would definitely be interested in settling the law of the procedure to remove a Judge of higher judiciary under Art. 124(5); read with the Act and the Rules. Moreover, the procedure for the removal of a Judge is sui generis. The discretion left to the committee under S. 4(1) of the Act to regulate its own procedure to investigate into the definite charges against the learned Judge bears vital importance. It is trite to burden the judgment with bead roll of precedents but suffice to reiterate that any member of the public having sufficient interest could maintain an action for judicial redress from public inquiry arising out of the breach of public duty or of law and seek enforcement of such public, constitutional or legal duty. Strict rule of locus was relaxed and personal right enforcement was whittled down. The ratio in S.P. Gupta v. Union of India (1982) 2 SCR 365 at p. 530 D to F : (AIR 1982 SC 149 at p. 194) is an authority on this score. In the public interest, therefore, any person genuinely interested to uphold independence of the judiciary and the law would get sufficient interest and acquires locus to seek to lay down public law in that behalf. The writ petition, therefore, should not be thrown out on the ground that the petitioner lacks locus to litigate the lis. But every Advocate need not be heard which would be only a surplusage at the hands of Raj Kanwar. In that behalf I agree with the view of brother Verma, J.

36. The question then is whether the writ petition is by way of a review of the earlier decision. It is settled law that a judgment of this court cannot be impugned or its correctness assailed by way of another writ petition on any ground whatever. In N. S. Mirajkar v. State of Maharashtra (1966) 3 SCR 744 : (AIR 1967SC 1), nine Judges Bench held that the judicial order is not liable to be questioned in a writ petition. The same view was reiterated by another Seven Judges' Bench in A. R. Antulay v. R. S. Naik 1988 (1) Suppl SCR I : (AIR 1988 SC 1531). It would thus be held that the correctness of the judgment of this court in SCJA's case (1991 AIR SCW 1573) is not amenable to the writ jurisdiction.

37. Sri Kapil Sibal, therefore, contends that the petitioner is not assailing the correctness of that judgment but he is placing another facet touching the jurisdiction of the Speaker, in admitting the motion and constituting the committee under the Act to conduct the enquiry, on the basis of fresh material which was not available to this court when SCJA's case was decided. It is settled law that it is the decision and not the reasons in support thereof that would be conclusive and binds all parties. Therefore, even if there is any additional material that was subsequently discovered, it would be of little avail to assail the correctness of the judgment except by way of review before the Bench that decided SCJA's case.

38. The Constitution confers in explicit language judicial review on the Supreme Court and by operation of Arts. 138, 139 and 140, enlarged that power, to elongate and effectively adjudicate the questions doing full and effective justice. The power of judicial review is to stamp out excesses in exercise of power, injustice or miscarriage of justice. The decision of this court is the last word on the interpretation of the Constitution and the laws as law of the land under Art. 141. The Judge is the living oracle working in dry light of realism pouring life and force into the dry bones of law to articulate the felt necessities of the time. The Judge, in particular from the higher judiciary possesses undoubtedly, power and jurisdiction to decide rightly or may err as well. The error must be corrected as provided under law. In its absence, it cannot be disturbed. The superior court has jurisdiction and power to determine its own jurisdiction and error in that behalf does not constitute an error of jurisdiction. The people would shape their course of conduct or dealings or legal affairs in accordance with law. The law laid down by this court operates as precedent. The law laid, thus, needs stability, continuity and certainty. The judicial vacilation would undermine the respect for the law and the utility of the very judicial process as well as its efficacy. We are bound by the taught traditions and built-in heritage of law. Adherence to precedents, stare decisis, is usually a wise policy for rule of law unless we have clear, compelling and substantial reasons for its reconsideration in the larger public interest. Reconsideration of an earlier view is not due to an act of judicial fallibility but an index of supremacy of law. So when all the relevant provisions of law or material aspects of the case or binding precedent was not brought to the notice of the court and its impact on the general administration of law, it would need reconsideration. The obvious error committed by the court leading to miscarriage of justice would need correction by Art. 142 or S. 114 read with Order 47 Rule I or S. 15 1, C. P.C. etc. But by itself it is not a. licence to unsettle the settled law or keep the law at variance at pleasure or whim.

39. This Court in Keshav Mills Co. Ltd. v. C.I.T. Bombay (1965) 2 SCR 908 at 921-922 : (AIR 1965 SC 1636 at p. 1644) laid that :

> "In reviewing and revising its earlier decision, this Court should ask itself whether in the interests of the public good or for any other valid and compulsive reasons, it is necessary that the earlier decision should be revised. When this Court decides questions of law, its decisions are, under Art. 141 binding on all courts within the territory of India, and so, it must be constant endeavour and concern of this court to introduce and maintain an element of certainty and continuity in the interpretation of law in the country. Frequent exercise by the Court of its power to review its earlier decisions on the ground that the view pressed before it later appears to the court to be more reasonable, may incidentally tend to make law uncertain and introduce confusion which must be consistently avoided. That is not to say that if on a subsequent occasion, the court is satisfied that its earlier decision was clearly erroneous, it should hesitate to correct the error; but before a previous decision is pronounced to be plainly erroneous, the court must be satisfied with a fair amount of unanimity amongst its members that a revision of the said view is fully justified. It is not possible or desirable, and in any case it would be inexpedient to lay down any principles which should govern the approach of the court in dealing with the question of reviewing and revising its earlier decisions.

It would always depend upon several relevant considerations:

What is the nature of the infirmity or error on which a plea for a review and revision of the earlier view is based? On the earlier occasion, did some patent aspects of the question remain unnoticed, or was the attention of the court not drawn to any relevant and material statutory provision, or was any previous decision of this court bearing on the point not noticed? Is the court hearing such plea fairly unanimous that there is such an error in the earlier view? What would be the impact of the error on the general administration of law or on public good? Has the earlier decision been followed on subsequent occasions either by this court or by the High Courts? And, would the reversal of the earlier decision lead to public inconvenience, hardship or mischief? These and other relevant considerations must be carefully borne in mind whenever this court is called upon to exercise its jurisdiction to review and revise its earlier decisions. These considerations become still more significant when the earlier decision happens to be a unanimous decision of a Bench of five learned Judges of this Court."

40. In Union of India v. Raghubir Singh (1989) 2 SCC 754: (AIR 1989 SC 1933), para 24, this Court laid stress on the importance of finality of decisions rendered by the Constitution Bench of this Court; it could only be upset where the subject was of such fundamental importance to national life or the reasoning is so plainly erroneous in the light of later thought that "it is wiser to be ultimately right rather than to be consistently wrong". The majority ratio in A. R. Antuley v. R. S. Naik (AIR 1988 SC 1531) (Supra) rests upon its peculiar facts offending Arts. 14 and 21 and so the earlier direction for trial by a High Court Judge was reversed. The rule of law laid by this court, from the above perspective, in SCJA's case (1991 AIR SCW 1573) is clear, precise, certain and needs to maintain consistence. It is, therefore, not desirable to reopen the said ratio. But this finding does not conclude the controversy. Facts gave rise to diverse questions of far reaching importance which had not arisen when the earlier decision was rendered or canvassed.

41. The public are vitally interested in the cleanliness of the public administration of justice which is of paramount importance. Public justice is the hall mark of public good. A person genuinely or bona fide interested in seeking declaration of law of public importance would always get sufficient interest and be entitled to seek declaration on that behalf which binds not only the State but every person, even if affected thereby, though not eo nominee a party respondent to the proceedings. A relief in favour of that person in his absence could in an appropriate case also be granted. In Makhanlal Waza v. State of Jammu and Kashmir (1971) 1 SCC 749 at 753 para 6: (AIR 1971 SC 2206 at p. 2209) (para 5), the Constitution Bench held that the law declared by this court was binding on the State and its officers and they are bound to follow it whether majority of the respondents were parties or not to the previous petition. In S. P. Gupta's case (AIR 1982 SC 149) this court having regard to the magnitude and importance of the constitutional questions involved in the cases accorded locus to the Advocates. In B. Prabhakara Rao v. State of A.P. 1985 (Supp) SCC 432: (AIR 1986 SC 210), this court held that the relief claimed is of a general nature and against the State and so the failure to implead all the affected parties is not a bar to maintain the writ petition. SCJA's case (1991 AIR SCW 1573) itself is an authority for the proposition of declaration of public law when laid by the

Advocates. In this case three Judges' Bench referred public law questions to this Bench which are of wider constitutional ramifications touching upon the independence of judiciary and the interpretation of the constitution and the Act.

42. In the larger public interest, as the questions have arisen for the first time, it would be just and fit for this court to declare the law of proper procedure to be followed in admitting the motion to remove a judge of higher judiciary and the investigation thereon by the committee so that it would be the law of the land under Art. 141 of the Constitution. Though it would be ideal to implead the learned Judge as respondent, his absence too would stand to no impediment to declare public law which would bind him too. In that view, it must be held that the petitioner being a legal practitioner would be entitled to seek only declaration of law of certain aspects which would be adverted to hereinafter.

43. This Court in SCJA's case (1991 AIR SCW 1573) held that the Speaker of the House of the People is a "statutory authority". Under Art. 93 of the Constitution, the House of the People having chosen the Speaker, he/she holds the office till he/she ceases as per Art. 94 to be a member of the House of the People or removed or resigned. The office of the Speaker is of trust by the House of the People elected by adult franchise by the people. Under S. 3(1) (a), on presentation of a motion praying for the removal of a Judge signed by not less than 100 members of the House of the People, "the Speaker, "may" under S. 3(1) of the Act, after consulting "such persons", if any, as he thinks fit and "after considering such material", if any, as may be available to him either admit the motion or refuse to admit the same.

44. The primary requisite which the Speaker is enjoined to do is to find whether the motion was signed by not less than 100 members of the House of the People,. Equally, he is required to consider the grounds and the materials, if any, available to him, before taking a decision to admit or refuse to admit the same. The word 'may' though couched with discretion, when the exercise of the power affects the rights of the Judge, causes convulsions on judiciary and generates psychological set back on on-going process, the Speaker was authorised to wisely exercise discretionary power by consulting such persons, if any, as he may have chosen and thinks fit to be consulted. Before admitting he motion, it may be expected and may be prudent that the Speaker may consult persons like the Chief Justice of India, the fountain head of judiciary, and the Attorney General of India, the Principal Advisor of the Govt., whose duty should be to give advice upon legal matters or to perform such duties of legal character. If the Speaker consults the Chief Justice of India he would help him by proper advice, and the Attorney General is under the constitutional duty to tender advice and to assist the Hon'ble Speaker to discharge the constitutional function, i.e. to decide in admitting or refusing to admit the motion to remove the judge of the constitutional judiciary. It is also equally salutary that before admitting the motion to remove the judge, there shall exist factual foundation. The grounds mentioned in the motion, the material or evidence placed in support thereof and the advice tendered, if consulted, would form "the record". He would consider that record and filter the process before deciding to initiate proceedings or refusal thereof. He need not weigh the pros and cons to find prima facie case. He acts, neither as a quasi-judicial nor an administrative authority but, purely as a constitutional functionary and with high sense of responsibility and on due consideration of 'the record' and arrives at a decision to admit or refuse to admit the motion to remove the Judge.

The Speaker, therefore, would act with utmost care, caution, circumspection and responsibility and wholly guided by considerations of larger interest of the public administration of justice. He would equally keep in his gaze and in the mind the seriousness of the imputations, nature and quality of the record before him and "its indelible chilling effect on the public administration of justice and independence of the judiciary in the estimate of the general public". Existence of definite material or evidence in support of the grounds of the motion, before initiation of the motion -for removal of the Judge is, thus, a condition precedent. Lest it would be an open invitation to initiate, for obvious reasons, proceedings to remove the Judge and then resort to collecting perjured evidence in support thereof against the judge which is subversive of judicial independence and a death- knell to rule of law. Action in any other way, the Speaker would forfeit the trust reposed by the founding fathers of the constitution in that office as well as the confidence of the House of People, i.e. the people of Bharat themselves. The fact that the Committee framed charges from the record transmitted by the Speaker fortifies that he had before him definite material and it furnishes presumptive inference that he had due consideration thereof before admitting the motion.

45. The question then is the scope of judicial review of the admission of the motion by the Speaker. Arts. 32, 131 to 136 entrust in express terms judicial review to the Supreme Court; in particular. Art. 32 as the ultimate repository and guardian of the rights and liberties of the people. The constitution is the fundamental law of the land. It limits, as its touchstone, the powers and functions of the organs of the State, viz. the Executive, the Legislature and the Judiciary. The Constitution also demarcated and delienated the powers and functions of these organs which implies that each organ would maintain a delicate balance with self-imposed restrictions for smooth functioning of the parliamentary democracy to establish an egalitarian social order under rule of law. Judicial review thus is an incident of and flows from the Constitution to securing and protecting the welfare of the people as effectively as it may, according justice - social, economic and political in all the institutions of national life. Court is the living voice of the Constitution which stands against any winds that blow as a haven of refuge to those who might otherwise suffer due to their helplessness, inability, non-conformity, handicaps, exploitation, victims of prejudice or public excitement etc. The paramount duty of the court is to protect their rights and translate the glorious and dynamic contents of the Directive Principles and the fundamental rights as a living law, making them meaningful to all manner of people.

46. In this light the question emerges whether the decision of the Speaker to admit the motion to remove the Judge moved by requisite number of members of the House of the People is amenable to judicial review. Undoubtedly, in a parliamentary democracy governed by rule of law, any action, decision or order of any statutory/ public authority/ functionary must be founded upon reasons stated in the order or staring from the record. Reasons are the links between the material, the foundation for their erection and the actual conclusions. They would also demonstrate how the mind of the maker was activated and actuated and their rational nexus and synthesis with the facts considered and the conclusions reached. Lest it would be arbitrary, unfair and unjust, violating Art. 14 or unfair procedure offending Art. 21. But exceptions are envisaged keeping institutional pragmatism into play, conscious as we are of each other's limitations. The process to remove a Judge under Art. 124 (4) consists of several steps, i.e. the motion duly moved i.e. consideration of the record by the Speaker and decision to admit the motion; his immediate constituting of the

Committee under S. 3(2) of the Act; drawing up of definite charges by the Committee and investigation for proof of misbehaviour or incapacity after adhering to the procedure envisaged therein; recording finding or findings- thereon and transmission of the report and the evidence to the Speaker and in case of proof of misbehaviour or incapacity placing the report and the evidence on the floor of the House and address by each house and majority resolution recommending to the President to remove the Judge. The entire process though integral, all the steps in the process do not take the same colour of judicial -process but bear different contours. The initiation of the motion is statutory and address by each house and resolution recommending removal of the Judge are political processes. Its admission, the constitution of the committee are statutory functions. Investigation by the Committee is judicial process. The Speaker, in this setting, acts neither as an Executive authority nor as a quasi-judicial authority. He merely discharges the functions of high constitutional responsibility. His decision to admit the motion to remove the Judge of the Constitutional Court for absence of reasons stated or staring from the record is not violative of Art. 14 or Art. 21 of the Constitution nor offends the principles of natural justice.

47. Section 3(2) of the Act also does not envisage to place the motion as an agenda before the Lok Sabha to secure the collective wisdom of the House before admitting or refusing to admit the motion. The Act exclusively confers on the Speaker the power, to his/her individual discretion, to take a decision in this behalf. The-further contention that the Speaker is constitutionally obligated to conduct a preliminary enquiry to ascertain the veracity of the grounds made in the motion and to determine whether or not prima facie case for investigation has been made out is devoid of substance. As seen earlier, he merely performs, though as a statutory authority, a constitutional function to admit or refuse to admit the motion to remove the Judge. The Constitution - entrusted to the Speaker that responsibility with the expectation that he acts as a reasonable man, as stated earlier, with high degree of responsibility, considers the grounds for the removal in the motion and the record before taking a decision to admit the motion or refusal there-of. The further allegation that the Speaker acted at the behest of the Janata Dal and Bhartiya Janta Party and that the admission of the motion "coloured by political motivation" is not based on any acceptable factual foundation and is personal to the Judge.

48. Whether the Speaker is enjoined to consult the Chief Justice of India before constituting the Committee under S. 3(2) or seek nomination of a sitting Judge of this Court or one of the High Courts Chief Justices is the next question. Section 3(2) contemplates that if the motion to remove a Judge is admitted, the Speaker shall, keep the motion pending and constitute, as soon as may be, a Committee "for the purpose of - investigation into the grounds on which the removal of a Judge is prayed for" (Emphasis supplied) under S. 3(1) consisting of a sitting Judge of this Court, one of the Chief Justices of the High Courts and a distinguished Jurist. Ex facie, it enjoins no obligation on the Speaker to have Consultation with the Chief Justice of India nor to seek nomination of a sitting Judge of the Supreme Court in terms of S. 3(2)(a) or one referred to in clause (b). It is his individual choice to constitute the Committee after obtaining the consent of the concerned member/members. The constitution of the Committee, therefore, without consultation of the Chief Justice of India or his nomination of any of the members is not per se illegal. It is desirable and salutary that the Speaker and Chairman of the Rajya Sabha may set up convention in this behalf. As it is a first case the failure thereof is neither subversive of Art. 124(5) nor dehors S. 3(2) of the Act. The Act fastens

no obligation to ascertain collective wisdom of the House 'through either political parties or their floor leaders. The further contention that the Speaker ought not to have directly approached a sitting Judge of this Court seeking his consent in terms of S. 3(2)(a) of the Act, also lacks substance. The further contention that the sitting Judge of this court and the Chief Justice of Bombay High Court are not performing their normal constitutional duties when they act as members of the Committee under the Act unless the President of India gives his consent and treats the function as part of their duties by a notification does not appear to be well founded. Giving consent is one part. Performance of duties as members of the Committee is a different facet. There is no constitutional obligation to obtain prior consent of the President. But before entering upon the duties by a sitting Judge of this court and the Chief Justice of a High Court as Presiding Officer and member of the Committee respectively, a notification, as directed to be issued in this behalf in SCJA's case (1991 AIR SCW 1573), is necessary. In this situation, the latter contention lost its luster. That apart the admission of the motion was already upheld by this court.

49. The next question is the validity and legality of the procedure adopted by the Committee to investigate into the alleged misbehaviour. To appreciate that question in its proper perspective and to cull out its effect, it is necessary to note the pertinent provisions of the Constitution, the Act and the Rules. The foundation to remove a Judge under Art. 124(4) through political process, is the "proved misbehaviour or incapacity". Article 124(5) envisages to regulate the procedure by law for the presentation of the address and "investigation and proof" of the misbehaviour or incapacity. S.4(1) provides the procedure thus;

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 .....

The Rules expressly. do not provide any specific procedure in this behalf. Two members of the Parliament, viz. Sri George Fernandez from Janata Dal and Sri Jaswant Singh from Bhartiya Janta Party and the SCJA sought permission, to place on record certain material in their possession said to be against the learned Judge and to lead evidence against him through their counsel and it granted conditional permission to assist the Advocate appointed under S. 3(9) to conduct the case against the learned Judge. A conjoint reading of S. 3(3) (framing of definite charges for investigation; their supply, together with a statement of grounds on which each charge is based to the Judge; his right of objections to the charges under Rule 6 read with S. 3(8) and if found tenable, revision thereof by rule 7, giving reasonable opportunity to present his fresh written statement of defence under Ss. 3(8) and 3(4) and Rule 7; right to cross-examine witnesses; adduction of evidence in defence; right of hearing under S.4(1) before submitting the report coupled with the duty to conduct ex parte enquiry under rule (8), if the Judge refuses to participate, does indicate that the Parliament intended that the investigation into the misbehaviour or incapacity of the Judge, shall be confined only between the advocate appointed under S. 3(9) of the Act and the learned Judge or his counsel who alone are entitled to participate and lead evidence in proof or disproof of the charges and be heard. By necessary implication, the Act and the Rules exclude participation or adduction of evidence by any other person to prove the alleged misbehaviour or incapacity. In the virgin area, the Committee appears to, have permitted them hedged with conditions to subserve the purpose. But none should be permitted to sully the reputation, integrity or conduct of the Judge concerned by

subsequently fabricating any material or adduction of evidence dehors the one already placed before the Speaker who transmitted to the Committee or the one summoned by the Committee. The contention of Sri Shanti Bhushan that 108 members who moved the motion are interested to participate and prove the charges against the Judge runs counter to the scheme of the Act and the Rules and does not warrant acceptance. The political process starts only with the requisite members of the Parliament moving the motion and it is the only mode to set in motion the process to remove a Judge. Undoubtedly, they are people's representatives but the law makers did not preserve to themselves the role of the prosecutor but assigned it to the Advocate appointed under S. 3(9) and referred to the Speaker to set up the committee to investigate into the misbehaviour since the Constitution had already preserved their right to participate in the address to the President on the floor of each House of the Parliament to discuss the conduct of the Judge. Their statutory obligation under S. 3(1) was to state the grounds to move the motion praying for removal of the Judge with requisite majority; and to lay the evidence before the Speaker/ Chairman. Their right to participation would revive only when the report and the evidence with finding/ findings that the misbehaviour or incapacity has been proved was laid on the floor of the House and discussion was initiated under Art. 124(4) and the Rules.

50. This statutory and constitutional setting and larger public interest furnishes unerring source to conclude that no third party has right to barge or butt in the proceedings and that none be permitted to participate in the investigation nor entitled to adduce evidence for or against the Judge. It is the Judge and the Advocate alone to participate and prove or disprove the charge/ charges and be heard. No one except the Judge, in the event of all adverse finding of guilt and none, when the Judge was absolved of the charge/ charge be permitted to assail the correctness, legality or validity of the proceedings, process or findings of guilty or not guilty. None has rights or interest with askance eye to parade the correctness of the proceedings or conclusions of the Committee, nor to avail judicial review.

51. The further contention that the procedure under the Commissions of Enquiry Act of public notice inviting evidence against the Judge from any person who has such evidence in his possession gets crushed by the, teeth of the builtin procedure prescribed in the Act and the Rules. Lest it would be, as stated earlier, an open invitation to the disgruntled to place fabricated evidence and it would be fraught with grave dangers, endless investigation and protraction for publicity seeding insidious effects. It is transparent from the scheme that any evidence sought to be used against the Judge must be laid by the requisite members of the house of people or Rajya Sabha before the Speaker/ Chairman and none be permitted thereafter. Take for instance that in the motion the grounds of misbehaviour with material facts or particulars were made and photostat copies in support thereof were enclosed. To satisfy and ensure correctness, authenticity and reliability the Enquiry Committee may summon the original records even before framing a charge. On a charge of corruption the grounds with material particulars were mentioned and the source was also specified. But there may not be any documentary evidence, in support thereof. Often would not be available, or the person in possession of such evidence may not be willing to commit himself before hand. The Committee has discretion depending upon the nature of the source or its dependability or reliability to frame a charge or may summon the person to swear to an affidavit and later may be examined as a witness or to tender occular evidence at the investigation and be subjected to cross-examination. Suppose

the grounds of corruption are delightfully vague, bereft of particulars and the source was not specified, it may be that the Committee may not feel it expedient to frame even a charge. Supose even when the details and source were specified in the grounds, but if the committee feels that the source is highly doubtful, undependable, etc. it may be open to the Committee to refrain framing a charge/charges. It is, thus, clear that the Act left wide discretion to the Committee to device its own procedure and adopt its own function during the investigation to discover and collect the evidence. This perspective, leads us to conclude that the permission granted to M/s George Fernandez and Jaswant Singh and SCJA is illegal and without authority of law and jurisdiction. Any adverse evidence against. the learned Judge placed or adduced by them which was not already part of the record of the Speaker, should be expunged, should not be considered and be excluded from the record of evidence of the Committee.

52. Equally, the contention that the procedure envisaged in S. 3(3), (4) and S. 4 are unconstitutional and ultra vires of the Art. 124(4) of the Constitution is misconceived. Art. 124(4) of the Constitution postulates that the Judge of the Supreme Court/ High Court shall not be removed from his office except by an order of the President passed after an address by each House of the Parliament supported by a majority of the total membership of that House and by majority not less than two-thirds of the members of the 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". Sub-Article(5) thereof regulates by law the procedure for the presentation of the address and for the "investigation and proof of misbehaviour or incapacity of the Judge". In exercise of the power under Art. 124(5) read with Art. 246(1) and entry 77 of List I of With Schedule to the Constitution, the Act was made.

53. Under S. 3(1) the motion for removal of the Judge must contain "the grounds on which the removal of the Judge was prayed for". It is obvious that the grounds are based on sufficient material or evidence. Section 3(3) envisages that "the committee shall frame definite charges against the Judge "on the basis of which the investigation is proposed to be held"

> (Emphasis supplied). Sub-sec. (4) thereof contemplates of communication in Form I of the Rules, of those charge/ charges so framed, together with a Statement of the grounds on which each such charge is based. On consideration of the grounds and the material or evidence in the motion the definite charge/ charges are to be framed which is the foundation to start investigation to prove the charges. Members of the Parliament are not familiar to or versed with the process or distinction between grounds and charge. They need to state the grounds and it is the duty of the committee to scan the evidence or material and to frame definite charge or charges. A reasonable opportunity for presentation of the written statement of the defence within a specified time should be given to the Judge who has the right to object in writing to the sufficiency of the framed charges. If the objection is sustained, the Committee would amend the charges under S. 3(8) read with Rule 7; and the Judge be given reasonable opportunity to present fresh written statement. If the Judge admits that he is guilty of misbehaviour or suffers from incapacity, the Committee shall record such admission and may state its finding on each of the charges in

accordance with such admission (Rule 7(1)). If the Judge denies the charge/charges or refuses or omits or is unable to plead or desires that the Committee shall proceed with the enquiry under S. 4(1), or if the Judge does not appear, on proof of service as per rule 8, the Committee may proceed with the enquiry ex parte. Under S. 3(9) the Central Govt. may appoint at the request of the Speaker/ Chairman an Advocate to conduct the case against the Judge. Rule 11 (1) gives the Judge the right to consult and be defended by an Advocate of his choice like in Art. 22(1) of the Constitution. S. 5 gives the committee all the powers of the Civil Court while trying a suit under the Code of Civil Procedure, .1908, to summon the witnesses required, discovery and production of the documents, to receive evidence on oath, issue commissions for the examination of witnesses or documents or such other matters as may be prescribed. The advocate obviously should examine witnesses under S. 4(1) to prove the case against the' Judge with an opportunity to the latter to cross-examine those witnesses; and adduction of his own evidence in rebuttal and an opportunity of hearing in his defence. Under S. 4(2) read with Rule 9, as the conclusion of the investigation, the committee should submit to the Speaker a report with its findings on each charge separately if there are more than one with such observations on the whole case as it thinks fit. If the report is not unanimous as per sub-rule (1) of Rules 9 majority view in terms of sub-rule (4) thereof should be communicated. If the majority finds that the charges are not proved and one member found the misbehaviour or incapacity proved it should be kept confidential and withheld to the Parliament or any other authority, body or person. Under Rule 10, the evidence of each witness examined by the Committee should be taken down in writing and under the personal dictation and superintendence of the Presiding Officer thereof.

The provisions of the Civil Procedure Code shall, as far as may be, apply for the examination of any witness in the inquiry. The majority finding of guilt forms the base for report. The evidence and the documents together with report of proved misbehaviour/ incapacity should be laid before each House of-the Parliament along with the report and evidence and minority contra view sent under S. 4(2).

54. A resume of the fascicule of these provisions would show that the committee has been empowered to regulate its own procedure, as is exigible, based on fact situation, to make investigation into the charge/charges of the misbehaviour or incapacity of the Judge consistent with the Act; Rules and fair play like the trial of a civil suit. If the Committee finds that there is no prima facie evidence to frame even charges, the need to proceed further into the charge/charges is obviated. It would be entitled to record findings together with a statement of general observations of the case and would submit its report that the record or facts do not warrant even the framing of a charge or charges or investigation, it would be a futile exercise, and retransmit the record to the Speaker in terms of the Act and the Rules. Framing of charges is thus the foundation for investigation. By necessary implication it excludes the adaptation of, inquisitorial process. If the committee finds prima facie case it would be open to it to frame defininte charge/charges and would ensue follow up action. The power under S. 3(5) is to summon the original record from proper custody or any record in support of the charges and sought to be relied on or witnesses to prove the

charges and given an opportunity to the Advocate and the Judge to examine their witnesses to prove/ disprove the respective case. By necessary deduction it is not a condition precedent to follow inquisitorial procedure as an initial step and thereafter to have adversorial enquiry. The power of the Committee to summon the record is to supplement the material placed before the Speaker/ Chairman by original record or other necessary evidence/ witness but not to supplant any new material unrelatable to the grounds in the motion or charges framed. The witnesses summoned or examined on commission are to prove as a fact the charges made against the Judge. 'The investigative power granted to the administrative agencies normally is inquisitorial in nature but the Act devised a special media or modus keeping the judicial independence beyond the ken of coloured visions and entrusted the power of investigation only to High Power Judicial Committee consisting of a sitting Judge of the Supreme Court, a sitting Chief Justice of a High Court and a distinguished Jurist, in one word a high "Judicial authority". The proceedings before the Committee is neither civil nor criminal but sui generis.

55. The appointment of the Advocate at the behest of the Speaker/Chairman was to prove the charged misbehaviour/incapacity against the Judge. He presumptively acts on behalf of the speaker like a counsel for the plaintiff without any hold or control by the Speaker and would assist the Committee as an independent agent. The Committee while making investigation does not act like a prosecutor nor itself would lead evidence against the Judge but acts akin to a Civil Court. The Speaker/ Chairman also has no say or sway during investigation into the alleged misbehaviour of the Judge. The Committee has only statutory duty to submit to the speaker its report and the evidence at the conclusion of the investigation.

56. The investigation done by the Committee, thus is to find whether the alleged misbehaviour/incapacity has been proved. Undoubtedly, the public law litigation often contradicts the premise behind those of private law. In public law wider public interest is involved over and beyond the contending parties. It concerns the future and private law litigation is retrospective in operation. Prof. Wade in his Administrative Law, 5th Edn. at p. 803 has stated that :

> "It is fundamental that the procedure before a tribunal, like that in a Court of law, should be adversary and not inquisitorial. The tribunal should have both sides of the case presented to it and should judge between them, without itself having to conduct an ,inquiry of the own motion, enter into the controversy and call evidence for or against either party. If it allows itself to become' involved in the investigation and argument, parties will quickly lose confidence in its impartiality, however fair minded it may in fact be."

57. The word 'Investigate' was defined in Black's Law Dictionary, 6th Edition, at p. 825 thus :

> "To follow up step by step by patient inquiry or observation. To trace or track; to search into; to examine and inquire into with care and accuracy; to find out by careful inquisition; examination; the taking of evidence; a legal inquiry."

58. The word 'investigation' was defined at p. 825 thus :

> "The process of inquiring into or tracking down through inquiry."

The word 'proof' was defined at p. 1215 thus :

> "The effect of evidence; the establishment of a fact by evidence. Any fact or circumstance which leads the mind to the affirmative or negative of any proposition. The conviction or persuation of the mind of a judge or jury, by the exhibition of evidence, of the reality of a fact alleged. The establishment by evidence of a requisite degree of belief concerning a fact in the mind of the trier of fact or the Court .....
>
> Proof is the result or effect of evidence, while evidence is the medium or means by which a fact is proved or disproved, but the words "proof" and "evidence" may be used interchangeably. Proof is the perfection of evidence; for without evidence there is no proof, although there may be evidence which does not amount to proof; for example, if a man is found murdered at a spot where another has been seen walking but a short time before, this fact will be evidence to show that the latter was the murderer, but, standing alone, will be very far from proof of it."

59. The Committee as Judicial authority adopts the procedure of a trial of a civil suit under the Code of Civil Procedure; It is not inquisitorial but adversary to search for the truth or falsity of the charge/charges by taking evidence during the investigation like a trial of a civil suit and it should be the duty of the Advocate and the learned Judge, or his counsel to prove/disprove if burden of proof rests on the Judge, as a fact by adduction of evidence or the affirmation or negation or disproof of the imputation under investigation. The word 'investigation' is to discover and collect the evidence to prove the charge as a fact or disprove. The Evidence Act defined the words "proved" and "disproved" as when after considering the matters before it, the Court either believes the fact to exist or not to exist or its existence is so probable/non-existence is probable and the test of acceptance or non-acceptance by a prudent man placed in the circumstances of a particular case was adopted. The consideration of the evidence is like a criminal case as the finding would be 'guilty' or 'non-guilty' of misbehaviour under Section 6 of the Act. The test of proof is "proof beyond reasonable doubt". The words investigation and inquiry used in Art. 124(5), the Act and the Rules are interchangeable and do not take different colours from varied contexts but connote the same theme to prove/disprove misbehaviour or incapacity charged against the Judge beyond reasonable doubt.

60. The problem could be broached through a different perspective as well. In normal parlance, in a criminal case, investigation connotes discovery and collection of evidence before charge-sheet is filed and based thereon definite charges are framed. Enquiry by a Magistrate is stopped when the trial begins. The trial is a culminating process to convict or acquit an accused. In Service Jurisprudence, departmental enquiry against a delinquent employee, bears similar insignia to impose penalty. At the investigation stage the accused or the charged officer has no say in the matter nor is he entitled to any opportunity. The disciplinary authority or enquiry officer, if appointed, on finding that the evidence discloses prima facie ground to proceed against the delinquent officer, the enquiry would be conducted. The Criminal Court frames charges after supplying the record of investigation relied on. Equally, the disciplinary authority/inquiry officer would frame definite

charge or charges and would communicate the same together with a statement of the facts in support thereof sought to be relied on and would call upon the delinquent officer to submit his explanation or written statement of defence etc. At the trial/enquiry the person is entitled to reasonable opportunity to defend himself. The higher judiciary holds the office of constitutional responsibility and is a constitutional functionary. His conduct is not subject to any discussion, under Art. 121 on the floor of Parliament. Therefore, no-one is entitled even to act as plain clothes spy to pry into his/their conduct to set rumours afloat. If it would be otherwise, the disgruntled would concoct stories, crow into the ears and pass on as palpably palatable truth either to deter or demoralise an upright, indomitable and unamenable Judge. When definite material or evidence was placed before the Speaker of the House of the People or Chairman of the Rajya Sabha, the Speaker Chairman, on due satisfaction as stated hereinbefore, that the ground/grounds needs/need investigation would ,admit the motion and transmit the record to the Committee i.e. high Judicial authority for investigation into the alleged misbehaviour. The investigation contemplated in Art. 124(4) of the Constitution or investigation or inquiry envisaged in the Act. are synonymous and interchangeable, as has rightly been contended by Sri Nariman.

61. The behavioural discipline of a Judge is an integral component of judicial independence. Admission of the motion is a statutory function. Investigation into misbehaviour or incapacity of the Judge through integral part of composite scheme to remove an erring Judge through political process, the proceedings before the Committee is purely judicial with all its indicia as the C.P.C. was expressly made applicable. The Constitution, the Act and the rules aimed to discipline the disciples when gone astray so as to establish the supremacy of law so that the pure flames of public administration of justice are always burning bright and aloft. Thereby it would balance the competing interests of independence of the judiciary and accountability. The makers of the Act after a great deal of deliberations made an admixture or amalgam of political and judicial process to remove an erring Judge atune to the constitutional creed and left the choice to the high judicial authority to adopt its own procedure to investigate into the charges of misbehaviour while adhering to the scheme of the Act, the Rules and fair play. the removal of a Judge is paved by a judicial verdict after following fair and just procedure. It is, therefore, most efficacious, most salutary and the best mode in vogue in the world's democratic countries to uphold independence of the judiciary. Thus it must be held that the Act and the Rules provided built-in fair procedure to prove the alleged misbehaviour or incapacity of a Judge. It is akin to adversorial and trial of a civil suit and the Committee acts as an independent "Judicial statutory authority". The provisions are consistent with Articles 124(4), 14 and 21 of the Constitution of India and they are not ultra vires of the Constitution.

62. The contention of Sri Altemeas Rein that since the learned Judge, on his elevation as a Judge of the Supreme Court, had vacated his office as Chief Justice of the Punjab and Haryana High Court, the alleged misbehaviour, if any, would cease to be relevant and that his conduct, i.e. his misbehaviour as a Judge of the Supreme Court alone would be subject- matter of the motion and investigation would stand to no minute scrutiny. Undoubtedly, by operation of Article 217(C) of the Constitution, the learned Judge had vacated the office as Chief Justice of the Punjab and Haryana High Court on October 5, 1989, the day on which he assumed the office as a Judge of the Supreme Court. What is relevant is his behaviour as a Judge while discharging the duties of the office of the

Judge, i.e. Chief Justice of the Punjab and Haryana High Court. What is pertinent in a motion for removal of the Judge is his/her misbehaviour or incapacity. For the efficacy of the judicial adjudication and peoples faith in the rule of law, people must have absolute faith and confidence in the honesty, integrity, impartiality, courage, and independence, of the Judge. So, upright and resolute conduct of the presiding Judges of the Court is imperative. If that faith and confidence is in any way shaken or shattered, the legitimacy of the very system of Govt. is tainted and the consequences will be disastrous. So long as one holds the judicial office, the above conduct remains germane and relevant. Any imputation of misbehaviour through a valid motion admitted by the Speaker needs investigation. The elevation of a High Court Judge to the Supreme Court is only an elongation of the judicial functions in the apex Court with the same judicial fervour. From this perspective, the alleged misbehaviour of the learned Judge, if proved, would remain germane, even while the learned Judge is a Judge of this Court. it would thus not be difficult to discount the contention of the learned Advocate as of no substance.

63. The meaning of the word 'misbehaviour' in Article 124(4) of the Constitution is the crux of the question. Before embarking into the question, it is necessary to gaze the founding father's animation and anxiety to wean away or ward off or disabuse the executive mind of the judges of the constitutional Court in judicial review. Article 124(2) of the Constitution fixes their tenure. Article 125 read with Schedule II guarantees him/her undiminished salary, privileges and perks prevalent on the date of assumpition of office as a Judge and during the tenure. Article 124(4) assures irremovability from office, except for "proved misbehaviour or incapacity" in accordance with the procedure therein, the Act and the Rules. Articles 121 then lifts the rigour of the total ban of public discussion against the conduct of the Judge only when the finding of proved misbehaviour or incapacity was recorded by the Committee; the report together with the evidence, the source material for discussion, was laid on the floor of each House of Parliament under Section 6 of the Act read with Rule 9(5) of the Rules and discussion was initiated, that too of the concerned Judge. The process for removal of the Judge had initiation from statutory process but, finding of "proved misbehaviour" was recorded by Judicial process and final act of removal by the President was after an address on the floor of each House of Parliament as political process determined by majority resolution as enjoined by Art. 124(4) of the Constitution. Obviously, Article 121 accords to the members of the Parliament full freedom to discuss the conduct of the Judge vis-a-vis proved misbehaviour and may concur with the committee or vote down the motion i.e. the presumptive finding is that the charge is deemed to have been proved or disproved under Section 6(3) or even if proved facts do not warrant removal of the Judge. Otherwise, there is a total ban on the discussion of the conduct of any Judge/Judges in the discharge of his/their duties. Resolution passed by majority in the manner laid by Art. 124(4) is the foundation for the President to pass an order removing the Judge from his office.

64. The underlying insulation and pervasion is to secure judicial independence to the Judge to do that should be just, equitous, fair or fit for a Judge to do. The reason is that the Judge is to make judicial review not only between citizen and citizen but also between the Executive Authority and the citizen or the States inter se or the Centre and the State. When the right of a citizen is attacked from any quarter or his claim is denied or is wrong the judiciary alone should punish the wrong doer or restore the violated right or redress the legal injury. Stronger weapon in the armoury of judiciary

is the confidence it commands and faith it inspires and generates in the public in its capacity to do even handed justice and keep the scales in balance in any dispute. The judiciary is thus the custodian and guardian of the rights of the citizen. It should, therefore, be independent, impartial and incorruptible. He/she should have the courage, uprightness and conviction to do his/her duty in terms of the oath.

65. It could be pondered over in tune with constitutional philosophy. Judicial review is the touchstone and repository of the supreme law of the land. Rule of law as basic feature permeates the entire constitutional structure. Independence of the judiciary is sine quo non for the efficacy of the rule of law. This Court is the final arbiter of the interpretation of the Constitution and the law. It has to maintain the delicate balancing wheel of the whole constitutional system keeping the Executive and the Legislature within the confines of their power and jurisdiction and also check' their excesses and declare ultra vires their powers and actions while keeping a self-check. The independence of the judiciary in the scheme is essential to establish real parliamentary democracy and maintenance of 'rule' of law to usher in an egalitarian social order, removing the existing imbalances, social and economic inequalities, assuring liberty, equality, fraternity and to further justice social, economic and political with dignity of the persons and fraternity to integrate Bharat. Independence of judiciary thus constitutes the cornerstone and the foundation on which our democratic polity itself is to rest and work on sound principles.

66. To keep the stream of justice clean and pure, the judge must be endowed with sterling character, impeccable integrity and upright behaviour. Erosion thereof would undermine the efficacy of the rule of law and the working of the Constitution itself. The Judges of higher echelons, therefore, should not be mere men of clay with all the frailties and foibles, human failings and weak character which may be found in those in other walks of life. The judges of higher judiciary should be men of fighting faith with tough fibre not susceptible to any pressure, economic, political or any sort. The actual as well as the apparent independence of judiciary would be transparent only when the office holders endow those qualities which would operate as impregnable fortress against surreptitious attempts to undermine the independence of the judiciary. In short the behaviour of the Judge is the bastion for the people to reap the fruits of the democracy, liberty and justice and the antithesis rocks the bottom of the rule of law.

67. From this constitutional orientation let us plough the seeds or roots of causation of "misbehaviour" in Article 124(4). The Constitution or the Act, obviously, gave no definition of misbehaviour. In Corpus Juris Secundum 1 Volume 58, the word "Misbehaviour" was defined as conduct, improper or unlawful behaviour. It has been held to be synonymous with misconduct. The words and phrases as judicially defined in Volume 3, "Misbehaviour" has been defined as "outrageous or improper conduct".

68. Black's Law Dictionary, 6th Edition, p. 998, defined 'misbehaviour' as "ill conduct, improper or unlawful behaviour. 'Misconduct' was defined at p. 999 as "A transgression of some established and definite rule of action, a forbidden act, a dereliction from .duty, unlawful behaviour, wilful in character, improper or wrong behaviour; its synonyms are misdemeanor, misdeed, misbehaviour, delinquency, impropriety, mismanagement, offence, but not negligence or carelessness. 'Misconduct

in office' was defined as "Any unlawful behaviour by a public officer in relation to the duties of his office, wilful in character. Term embraces acts which the office holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act".

69. In Encylopedic Law Dictionary, 3rd Edition, at p. 720 'misbehaviour' was defined as "improper or unlawful conduct, generally applied to a breach of duty or propriety by an officer, witness, etc. not amounting to a crime. P. Ramanathan Aiyar's 'The Law Lexicon, Reprint Edition, 1987 defines 'misbehaviour' at p. 820 as "ill conduct; improper or unlawful behaviour. 'Misconduct' was defined at p. 821 as "the term "misconduct' implies a wrongful intention, and not a mere error of judgment. Misconduct is not necessarily the same thing as conduct involving moral turpitude". The word 'misconduct' is a relative term, and has to be construed with reference to the subject-matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. 'Misconduct' literally means wrong conduct or improper conduct", 'Misconduct in office' was defined as "unlawful behaviour or neglect by a public officer, by which the rights of a party have been affected ".

70. Every act or conduct or even error of judgment or negligent acts by higher judiciary per se does not amount to misbehaviour. Wilful abuse of judicial office, wilful misconduct in the office, corruption, lack of integrity, or any other offence involving moral turpitude would be misbehaviour. Misconduct implies actuation of some degree of mens rea by the doer. Judicial finding of guilt of grave crime is misconduct. Persistent failure to perform the judicial duties of the judge or wilful abuse of the office dolus malus would be misbehaviour. Misbehaviour would extend to conduct of the Judge in or beyond the execution of judicial office. Even administrative actions or omissions too need accompaniment of mens rea. The holder of the office of the judge of the Supreme Court or the High Court should, therefore, be above the conduct of ordinary mortals in the society. The standards of judicial behaviour both on and off the Bench are normally high. The failing moral or ethical standards in the society are no ruse nor refuse to slacken the higher standards of judicial conduct. The society, therefore, is entitled to expect higher degree of propriety and probity in the judicial conduct from higher judiciary. There cannot be any fixed or set principles, but an unwritten code of conduct of well established traditions are the guidelines for judicial conduct, The conduct that tends of undermine the public confidence in the character, integrity and impartiality of the judge must be eschewed. It is expected of him to voluntarily setting forth wholesome standards of conduct reaffirming fitness to higher responsibilities. Even the private life of a judge must adhere to standards of probity and propriety, acceptable to others. They alone would receive confidence and respect from the public. This legal setting would furnish the foundation to focus the question whether the learned Judge had committed financial improprieties or irregularities undermining the above standards in his administrative disposition and whether would constitute misbehaviour is to be angulated and findings given from the proven evidence by the Committee. Such finding of proved misbehaviour would undoubtedly be subject to requisite majority voting and when voted would become "deemed proof under S. 6(3)" for removal under Art. 124(4). Then alone can the finding of proved misbehaviour be deemed accepted and would become final. If the motion is voted down, by necessary implication, the finding of the committee stands disproved and rejected.

71. We are alive to the fact that declaration of law would be laid only to apply it to the facts of the case on hand for or not granting the relief. The facts of the case presented an extraordinary scenario. The Constitution or the Act did not define 'misbehaviour'. Several International forums for judicial independence suggested to define misbehaviour but to no avail. No legislature in any democratic country attempted to do so as it would appear to be difficult to give a comprehensive definition to meet myriad situations. The scope of judicial review after the committee records findings that the misbehaviour has been proved would appear to be fraught with imponderables. The occasion for judicial review would scarcely arise. There are no set rules of conduct. The law laid by this Court under Article 141 of the Constitution is the law of the land. Under these diverse circumstantial constraints I undertook to survey and declare the law and left it for its application by the committee to the proved facts.

72. Though Sri Sibal, attempted to argue on the grounds of violation of the principles of natural justice for non-supply of needed documents etc., I refrain to go into the diverse questions. Firstly, the reliefs sought are personal in nature to the learned Judge. He alone should seek and none else be permitted to assail. In a proceeding of this or the like or of departmental enquiry or in criminal matters no one except the person aggrieved is entitled to ventilate the grievances regarding the legality, propriety, correctness or otherwise of the charges, the procedure the Committee adopted or the findings recorded therein. If the law permits suo motu or inherent exercise of power and the facts warrant exercise of the power, it would be open to the court tribunal in an appropriate case, to do public justice to correct the same. Secondly, investigation has since been completed and the report is ready, I am sure the learned members with their rich and variegated experience, must have subjected the evidence to the same standard of consideration and reached at their findings. Even if. otherwise a fresh look in this light, if need be, may not be surplusage but assuages an reassurance of the confidence. So it is for the Committee to look into and if need be afresh. This Court cannot trench into that area. If the findings are positive they would be subject to political process of discussion on the floor of each House of Parliament and resolution per majority.

73. The writ petition is accordingly allowed to the extent of the above declarations and we direct the Registrar General to address a letter to the Committee with a request to exclude the entire adverse evidence or record against the learned Judge placed either by M/s. George Fernandez, Jaswant Singh or the Sub Committee on Judicial Accountability, except the one part of the record sent by the Speaker. In other respects, subject to the above declaration of law the writ petition stand dismissed. But in the circumstances, without costs.

74. ORDER :- This Writ Petition is dismissed in accordance with the majority opinion.