

Supreme Court of India

Anand Kumar vs Sri Kattali Bhaskaran & Ors on 19 January, 1988

Equivalent citations: 1988 SCR (2) 728, 1988 SCC (2) 50

Author: A Sen

Bench: Sen, A.P. (J)

PETITIONER:

ANAND KUMAR

Vs.

RESPONDENT:

SRI KATTALI BHASKARAN & ORS.

DATE OF JUDGMENT 19/01/1988

BENCH:

SEN, A.P. (J)

BENCH:

SEN, A.P. (J)

VENKATARAMIAH, E.S. (J)

SHARMA, L.M. (J)

CITATION:

1988 SCR (2) 728

1988 SCC (2) 50

JT 1988 (1) 154

1988 SCALE (1) 120

ACT:

Constitution of India, 1951) Articles 74. 217(3)-
Determination of age of Chief Justice or Judge of High Court
to be decided by the President of India as a constitutional
functionary in consultation with the Chief Justice of India-
Such a question is beyond the reach of Council of Ministers.

HEADNOTE:

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The appellant raised the question as regards the
determination of age of the Chief Justice of Andhra Pradesh
High Court, in these Special Leave Petitions filed against
the Judgment and order of the Andhra Pradesh High Court
dismissing in limine the Writ Appeals against the order of
dismissal of the Writ Petitions by a Single Judge of the
High Court.

In the course of the proceedings, this Court, on
January 8, 1988, made certain queries to which the
Additional Solicitor General furnished information broadly
on the following lines:

That a view in the matter will be taken by the
President of India after the advice of Chief Justice of
India is made available, and that all relevant files have

been submitted to the Chief Justice of India along with the opinion as to the effect of the judgment pronounced by the Andhra Pradesh High Court.

In view of the information made available, this Court dismissed the Special Leave Petitions and,

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HELD: 1. The matter as to the age of the retired Chief Justice or a sitting Judge of a High Court is a judicial function of the President of India, which has to be discharged in accordance with the special provisions made under Article 217(3) of the Constitution. [730C-D]

2. Such a question as to the age of the Chief Justice or a Judge, under Article 217(3) of the Constitution, is beyond the reach of the Council of Ministers under Article 74 of the Constitution. [730D-E]

Union of India v. Jyoti Prakosh Mitter, [197 1] 3 SCR 483, followed.
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3. Since the President of India, in compliance with Article 217(3), has referred the question as to the age of Shri K. Bhaskaran, Chief Justice of Andhra Pradesh High Court, to the Chief Justice of India for his opinion, no Writ of Mandamus can lie. [730B]

4. The President of India as a constitutional functionary has discharged his duties under Article 217(3) and the decision must rest on the advice of the Chief Justice of India and not the Council of Ministers. [730C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Special Leave Petition (Civil) Nos. 12-12A of 1988.

From the Judgment and order dated 18.12.1987 of the Andhra Pradesh High Court in W.A. Nos. 1649 and 1650 of 1987 P.N. Lekhi, M.K. Garg and Lokesh Kumar for the Petitioner.

Kuldeep Singh, Additional Solicitor General and Mrs. A. Subhashini for the Respondents.

The following order of the Court was delivered:

O R D E R In response to the queries made by this Court by its order dated January 8, 1988 Shri Kuldeep Singh, learned Additional Solicitor General has furnished the relevant information as under:

(1) In the matter of the age of Shri Justice K. Bhaskaran, Chief Justice of the Andhra Pradesh High Court, the advice and comments of the Chief Justice of India were sought in terms of Articles 217(3) of the Constitution of India. The files containing all the relevant papers were referred to the Chief Justice of India on 28th September,

1987.

(2) The Chief Justice of India on 29th December, 1987 desired to have an opinion as to the effect of the judgment pronounced by the Andhra Pradesh High Court concerning the matter of the age of the Chief Justice Bhaskaran. The opinion was made available to the Chief Justice of India on 6th January, 1988. The Chief Justice of India on 11th January, 1988 indicated further course of action in the matter. The file has been resubmitted to the Chief Justice of India on 16th January, 1988 for his further advice.

(3) A view in the matter will be taken by the President of India after the advice of the Chief Justice of India is made available.

In view of the foregoing, it is clear that the President of India in compliance with Article 217(3) of the Constitution of India has referred the question as to the age of Shri K. Bhaskaran, the Chief Justice of the Andhra Pradesh High Court to the Chief Justice of India for his opinion. That being so, no writ of mandamus can lie. The President of India as a constitutional functionary has discharged his duties under Article 217(3) of the Constitution and the decision must rest on the advice of the Chief Justice of India and not the Council of Ministers. As laid down in the Union of India v. Jyoti Prakash Mitter,, [1971] 3 SCR at 503 & 504, the matter as to the age of the Chief Justice or a sitting Judge of a High Court is a judicial function of the President of India, which has to be discharged in accordance with the special provisions made under Article 217(3) of the Constitution. Such a question as to the age of the Chief Justice or a Judge under Article 217(3) of the Constitution is beyond the reach of the Council of Ministers under Article 74 of the Constitution.

J.C. Shah, C.J., speaking for the Constitution Bench has laid down the law in these words:

It is necessary to observe that the President in whose name all executive functions of the Union are performed is by Art. 217(3) invested with judicial power of great significance which has bearing on the independence of the Judges of the Higher Courts. The President is by Art. 74 of the Constitution the Constitutional head who acts on the advice of the Council of Ministers.... "

The question as to the age of Shri K. Bhaskaran, the Chief Justice of the Andhra Pradesh High Court must, therefore, be decided by the President of India on the advice of the Chief Justice of India as enjoined by Article 217(3) of the Constitution in the light of the principles laid down by this Court in Jyoti Prakash Mitter's, case.

The High Court, in our considered opinion, should have thrown out the petition under Art. 226 of the Constitution at the very threshold because the President of India was seized with the question under Article 217(3) of the Constitution. Indeed, it appears from the judgment of the High court that when the learned counsel for the Union of India A informed the Court that the President of India is seized with the question, the counsel for the appellant conceded that the writ of quo warranto is not maintainable.

The special leave petitions are accordingly dismissed.

G.N.

Petitions dismissed.