

Supreme Court of India

U.P Judicial Officers Assn vs Union Of India on 7 March, 1994

Equivalent citations: 1994 SCC (4) 687

Author: M Venkatachalliah

Bench: Venkatachalliah, M.N.(Cj)

PETITIONER:

U.P JUDICIAL OFFICERS ASSN.

Vs.

RESPONDENT:

UNION OF INDIA

DATE OF JUDGMENT 07/03/1994

BENCH:

VENKATACHALLIAH, M.N. (CJ)

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VENKATACHALLIAH, M.N. (CJ)

PANDIAN, S.R. (J)

CITATION:

1994 SCC (4) 687

ACT:

HEADNOTE:

JUDGMENT:

ORDER

1. We have heard Shri R.K. Jain, learned Senior Counsel for the petitioner and Shri Yogeshwar Prasad, learned Senior Counsel for the State of Uttar Pradesh. This writ petition raises certain serious and important issues as to the meaning of judicial independence in relation to the judicial services and the means by which it should be ensured and protected. Incidental to the requirement of maintaining such independence of the judiciary, it is of importance that members of the judicial services should not work under apprehensions of retaliatory action by the Police and the Executive whatever form such action might assume.

2. We make an interim order that no crime or criminal case shall be registered against a judicial officer in respect of anything allegedly done or purported to be done in the discharge of his duty or in his capacity as holder of such judicial office without the prior permission of the Chief Justice of the High Court concerned. In making this interim order, we take into account the observations of

this Court in K. Veeraswami v. Union of India' where, in the context of Judges of the superior courts, it was observed : (SCC pp. 707-09, paras 59 and 60) "59. There is, however, apprehension that the executive being the largest litigant is likely to misuse the power to prosecute the Judges. That apprehension in our over-litigious society seems to be not unjustified or unfounded. The Act no doubt provides certain safeguards. Section 6 providing for prior sanction from the competent authority and directing that no court shall take cognisance of the offence under Section 5(1) without such prior sanction is indeed a protection for Judges from frivolous and malicious prosecution. It is a settled law that the authority entitled to grant sanction must apply its mind to the facts of the case and all the evidence collected before forming an opinion whether to grant sanction or not. Secondly, the trial is by the court which is independent of the executive. But these safeguards may not be adequate. Any complaint against a Judge and its investigation by the CBI, if given publicity will have a far- reaching impact on the Judge and the litigant public. The need therefore, is a judicious use of taking action under the Act. Care should be taken that honest and fearless judges are not harassed. They should be protected.

60.... We therefore, direct that no criminal case shall be registered under Section 154 CrPC against a Judge of the High Court, Chief Justice of High Court or Judge of the Supreme Court unless the Chief Justice of 1 (1991) 3 SCC 655 689 India is consulted in the matter. Due regard must be given by the Government to the opinion expressed by the Chief Justice. If the Chief Justice is of opinion that it is not a fit case for proceeding under the Act, the case shall not be registered."

3.In Delhi Judicial Service Association v. State of Gujarat<sup>2</sup> this Court issued the following guidelines : (SCC pp. 411-12) "(A) A Judicial Officer should be arrested for any offence under intimation to District Judge or the High Court as the case may be. (B) In case of necessity for immediate arrest of a Judicial Officer only a technical or formal arrest may be effected.

(C)The fact of such arrest should be immediately communicated to the District and Sessions Judge of the concerned District and the Chief Justice of the High Court. (D)The Judicial Officer so arrested shall not be taken to a police station, without the prior order or directions of the District and Sessions Judge of the concerned district, if available.

(E)Immediate facilities shall be provided to the Judicial Officer for communication with his family members, legal advisers and Judicial Officers, including the District and Sessions Judge.

(F)No statement of a Judicial Officer who is under arrest be recorded nor any panchnama be drawn up nor any medical tests be conducted except in the presence of the Legal Adviser of the Judicial Officer concerned or another Judicial Officer of equal or higher rank, if available.

(G) Ordinarily there should be no handcuffing of a Judicial Officer.

The above guidelines are not exhaustive but these are minimum safeguards which must be observed in case of arrest of a Judicial Officer. These guidelines should be implemented by the State Government as well as by the High Courts."

The aforesaid guidelines were in regard to all offences generally; but when any criminal conduct is attributed to a Judicial Officer in discharge of his duties or in purported exercise or discharge of his duties, we direct that, in addition, no crime for investigation should be registered pursuant to any FIR without the permission of the Chief Justice of the High Court concerned.

4. List this matter before the Constitution Bench at the next sitting.

Court Masters 2 (1991) 4 SCC 406 693