

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 792 OF 2014

Additional District and Sessions Judge 'X' ... Petitioner

versus

Registrar General,
High Court of Madhya Pradesh and others ... Respondents

J U D G M E N T

Jagdish Singh Khehar, J.

1. The present writ petition has been filed by a former Additional District and Sessions Judge of the Madhya Pradesh Higher Judicial Service. The factual narration in the writ petition incorporates allegations of sexual harassment aimed at the petitioner, at the behest of a sitting Judge of the High Court of Madhya Pradesh (herein after referred to as, 'the High Court'), who has been impleaded by name as respondent no.3. The authenticity of the allegations levelled by the petitioner, which have been expressly disputed by respondent no.3, would stand

affirmed or repudiated only after culmination of due process. Such being the sensitivity of the matter, it would be inappropriate to disclose the identity either of the petitioner or of respondent no.3. In the title of the present writ petition, as also in its contents, the petitioner has been described as Additional District and Sessions Judge 'X'. We shall refer to her as Addl.D&SJ 'X'. This would help to preserve the dignity of the petitioner. Insofar as respondent no.3 is concerned, since he is a sitting Judge of the High Court, his reputation deserves a similar protection, we shall refer to him as Justice 'A'.

2. The averments made in the writ petition reveal that the petitioner having practiced as an advocate for fifteen years at Delhi, applied for appointment by way of direct recruitment to the Madhya Pradesh Higher Judicial Service. On the culmination of the process of selection, the merit list of the selected candidates was released on 22.3.2011. The petitioner was placed at serial no.2 in the merit list. She was accordingly appointed as District Judge (entry level) by the Madhya Pradesh State Legal and Legislative Works Department, vide order dated 8.7.2011. She was deputed for training on 30.7.2011 and was posted as Additional District and Sessions Judge, Gwalior.

3. The contents of the writ petition are systematically divided into various components. In the first part of the writ petition, the petitioner endeavours to demonstrate her efficient discharge of duties. For this, reliance has been placed on an order passed by the Sessions Judge, Gwalior dated 9.10.2012 (while exercising powers under Sections 408 and 409 of the Criminal Procedure Code), whereby all sessions cases, criminal appeals, criminal revisions and miscellaneous criminal cases etc. pending in the Court of the 2nd Additional Sessions Judge, were transferred to the Court of the petitioner. Relying on the above order, it is the petitioner's contention, that her superiors immediately recognized her professional caliber, and afforded her an opportunity to deal with the important and sensitive cases. On 23.1.2013, the Sessions Judge, Gwalior, nominated the petitioner for regular hearing and expeditious disposal of heinous and sensational cases involving offences of rape, gang-rape, rape with murder etc. under the Indian Penal Code. It is further brought out, that on 9.4.2013, the petitioner was appointed as the President of the Vishaka Committee (in compliance with the directions issued by this Court in Vishaka v. State of Rajasthan, (1997) 6 SCC 241), by the District and Sessions Judge, Gwalior. It

is also pointed out, that the High Court (in exercise of the power vested in it under Section 6(2) of the Madhya Pradesh Dekaiti Aur Vyapaharan Prabhavit Kshotra Adhiniyam, 1981) appointed the petitioner as “Special Judge” for dealing with matters falling in a defined area within the territorial jurisdiction of Gwalior Sessions Division. It is pointed out that again, through a notification dated 10.5.2013 (in exercise of the power under Section 9(3) of the Code of Criminal Procedure), the High Court designated the petitioner as “Presiding Officer” for speedy trial of offences of rape, gang-rape, murder with rape and other related offences. It is also the case of the petitioner, that the petitioner’s performance came to be evaluated by the District and Sessions Judge in a report dated 5.1.2013. It is submitted, that thereafter in April 2013, the District Judge (Inspection and Vigilance) inspected the civil and criminal records and assessed the petitioner’s performance.

4. The factual position with respect to the selection and appointment of the petitioner has not been disputed. The fact that the petitioner was assigned different responsibilities from time to time is also acknowledged. It is not necessary for us to record the personal assessment made by the petitioner on the

basis of the afore-stated reports, suffice it to state that in the reply filed before this Court on behalf of the Registrar General of the High Court (respondent no.1), it is acknowledged that even though her disposal was assessed as - average, her overall performance was graded as - very good 'B'. It was further pointed out, that even though the petitioner was advised to improve inter-personal relationship and team work skills, her overall assessment was evaluated as - 'very good'.

5(i). The next component of the writ petition is devoted to the allegations levelled against respondent no.3 - Justice 'A'. It is asserted, that on 8/9-12-2013, the wife of the Chief Judicial Magistrate, Gwalior called, the petitioner on her land line. During her conversation, she informed the petitioner, that respondent no.3 - Justice 'A', was eager that the petitioner should perform a dance on an "item-song", on the occasion of ladies sangeet (on 10.12.2013) during the festivities of the 25th marriage anniversary of respondent no.3. It is also the assertion of the petitioner, that she politely refused the invitation for 10.12.2013 by giving out that she had prior commitments, for that date. It is sought to be asserted by the petitioner, that for reasons of official protocol, she felt compelled to attend the main marriage anniversary

celebrations scheduled for 11.12.2013. It is pointed out, that she ventured to do so in the company of her two daughters. It is alleged by the petitioner that on 11.12.2013, respondent no.3 - Justice 'A' came close to her and whispered in her ear, that he missed the opportunity of viewing her sexy and beautiful figure dancing on the floor. It is the petitioner's assertion, that respondent No.3 also told the petitioner, that he wished he could see her dancing. The petitioner claims that she was appalled by the above behaviour of respondent no.3, and therefore, she left the party along with her two daughters, with tears in her eyes.

(ii). The factual position narrated above, pertaining to the telephonic conversation with the wife of the Chief Judicial Magistrate, Gwalior has been denied by respondent no.3. For this, respondent no.3 has appended the affidavit of the wife of the Chief Judicial Magistrate, Gwalior as Annexure R-16 with his counter-affidavit. In her affidavit, it is *inter alia* asserted, that she had neither called the petitioner on 8/9-12-2013, nor had she told the petitioner that respondent no.3 - Justice 'A' was eager to watch her perform a dance on an "item-song". The other assertions at the behest of the petitioner, narrated in the foregoing paragraph have also been denied by respondent no.3.

It is the pointed contention of respondent no.3, that there was no occasion for him to personally interact with the petitioner on 11.12.2013. It is also the assertion of respondent no.3, that the function of 11.12.2013 was video-graphed, which shows that the petitioner enjoyed her dinner and was seen talking to other invitees.

(iii). Addl.D&SJ 'X' has also asserted, that in January 2014, respondent no.3 had sent messages to her through the District Registrar, asking the petitioner to meet him, at his residence. It is the contention of the petitioner, that knowing that respondent no.3 - Justice 'A' usually lived alone, she avoided going to his residence. As per the understanding of the petitioner, thereafter respondent no.3 started showing abnormally high interest in her work, and also started making sexually coloured remarks, at her. Illustratively, referring to the occasion of a marriage party of a judicial officer on 22.2.2014, it is asserted, that respondent no.3 in the presence of the petitioner's 16 years old daughter, told her that "although your work is very good, but you are far more beautiful than your work". It is contended, that he further went on to say, that looking at the petitioner, one does not desire, even to blink ones eyes. It is averred, that the above remarks were

made, while respondent no.3 – Justice ‘A’ sized up the petitioner from head to toe. It is also the pointed assertion of the petitioner, that while making the above remarks, respondent no.3 – Justice ‘A’, put his hand on her back. It is sought to be asserted, that the above behaviour of respondent no.3, discomforted the petitioner as well as her daughter. It is also pointed out, that the petitioner indicated to respondent no.3, that his advances were not welcome. Thereafter, the petitioner along with her daughter, left the marriage party.

(iv). The factual position as recorded in the foregoing paragraph has been denied by respondent no.3 in the counter-affidavit filed by him. It is also asserted, that respondent no.3 did not even meet the petitioner, at the aforesaid marriage party. It is sought to be asserted in the counter-affidavit filed on behalf of respondent no.3, that he is in possession of the videography of the marriage function in question, which can be produced by him.

(v). Another instance referred to by the petitioner in the writ petition, relates to a farewell party organized by the District Judiciary, on the occasion of the retirement of a Judge from the Gwalior Sessions Division. It is asserted, that all sitting Judges of the Gwalior Bench of the High Court, had been invited. On the

said occasion, it is asserted, that respondent no.3 - Justice 'A', continuously stared at the petitioner. The petitioner claims, that sensing the attitude of respondent no.3 and given his past conduct, the petitioner left the farewell party before respondent no.3 could make any advances at her.

6. In the counter-affidavit filed on behalf of respondent no.3, the facts narrated in the foregoing paragraph have been expressly denied. It has been asserted, that respondent no.3 had never inter-acted with the petitioner personally, except when the petitioner had herself made three calls to him for her own problems.

7(i). The next component of the narration in the writ petition deals with the consequences which the petitioner had to suffer for not responding to respondent no.3 - Justice A's advances. First and foremost, it is asserted, that respondent no.3 started subjecting the petitioner to intense surveillance and harassment, in his capacity as Administrative Judge of Sessions Division, Gwalior from April 2014 onwards. It is submitted, that the aforesaid surveillance/harassment was effectuated through the District Judge, the District Judge (Inspection), and the District Registrar. It is pointed out, that the District Judge and the District

Judge (Inspection) visited the petitioner's court room with unusual frequency. Sometimes, on an hourly basis. At times, within a few minutes of her commencing court work. Sometimes, minutes after her rising for lunch. At other times, minutes after her resuming court work after lunch. And also after the petitioner had risen at the end of the day's work. It is also asserted, that the District Judge, Gwalior would depute his staff to check the petitioner during court working hours. On certain occasions, this happened even during in-camera trials. When deputed by the District Judge, his staff, at times, would even snatch board-diaries of cases pending in her court. It is the petitioner's contention, that no fault could ever be found insofar as the discharge of duties and the responsibilities of the petitioner were concerned. It is the contention of the petitioner, that all these inspections were not carried, for the purpose contemplated under the Madhya Pradesh Rules (Criminal) Inspection of Criminal Courts (for short, 'the Rules'). Relying on Rule 703 of the Rules, it is asserted, that these actions were only for harassing the petitioner.

(ii). In the context of harassment, it is also averred in the writ petition, that the petitioner availed casual leave in May 2014, to attend a family event in New Delhi. During the above leave

period, a stenographer attached to the petitioner's court, was posted elsewhere for a full day, on the instructions of the District Judge. It is pointed out, that this was done despite the express request made by the petitioner to the Court Manager, that the concerned stenographer had to type several judgments, which the petitioner had dictated, before proceeding on leave. Even otherwise, it is pointed out, that according to the orders of the District Judge (dated 25.4.2014), such posting is permissible only for half a day. On account of the above interference in the discharge of her official functioning, the petitioner addressed a complaint dated 12.5.2014 to the District Judge against the Court Manager. In her complaint, the petitioner also highlighted the fact that the Court Manager usually refused to provide alternative staff to the petitioner, when staff attached to the petitioner was on leave. According to the petitioner, rather than taking action against the Court Manager, the District Registrar issued a notice to the concerned stenographer, asking him to show cause why he had not disclosed the extent of pending dictation work, with reference to the petitioner's court. The concerned stenographer was asked to file his reply, within three days. It is averred, that the petitioner again approached the District Judge on the above

issue. Rather than appreciating the predicament of the petitioner, the District Judge informed the petitioner, that if she said anything, he would spoil her confidential report. It is also averred, that the District Judge advised her to make a complaint to the Administrative Judge (respondent no.3) if she had any problem with the system. According to the petitioner, given aforesaid circumstances, she contacted respondent no.3 - Justice 'A' on his mobile phone on 30.5.2014. Respondent no.3, it is averred, informed her, that he could not speak to her as he was not in station.

(iii). Another instance of harassment and victimization pointed out by the petitioner emerges from the fact, that the peon provided to the petitioner at her residence was diagnosed with a likelihood of cancer on 12.5.2014. The concerned peon sought leave for treatment, at Mumbai. Despite several oral requests, no substitute was provided to the petitioner. Therefore, on 20.5.2014, the petitioner sent a letter to the District Judge, Gwalior, requesting him to provide a peon at her residence, out of the surplus staff. Even though the petitioner was entitled to a full time peon at her residence, on 22.5.2014, the District Judge made

provision for a temporary peon for two hours (from 9 a.m. to 11 a.m.).

(iv). In order to further demonstrate victimization, it is pointed out, that the petitioner was suddenly and unceremoniously transferred mid-session on 8.7.2014. It is further pointed out, that general transfers are made every year, in March/April. It is the case of the petitioner, that when annual general transfers were made in 2014, the petitioner had not completed the stipulated tenure of service, and accordingly, was not subjected to transfer. Mid-session transfer, according to the petitioner, is almost impermissible, and as such is extremely rare, and is effected only for compelling reasons. In order to demonstrate the assertion of victimization, it is pointed out, that the petitioner was transferred to Sidhi, a remote place in Madhya Pradesh. According to the petitioner for her posting, Sidhi was deliberately chosen, to prevent her husband from visiting her on week ends, because of its non-connectivity. It is also pointed out, that Sidhi was chosen because the area is well known to be naxal affected and it would be difficult for the petitioner to work, at that station. It was also pointed out, that the said transfer was in violation of the transfer guidelines/policy of the High Court. (guidelines/policy

appended to the petition, as Annexure P-27). On the very next day, after the receipt of the transfer order dated 8.7.2014, i.e., 9.7.2014, the petitioner-Addl.D&SJ 'X', addressed a representation to the Registrar General of the High Court, seeking eight months extension. The aforesaid extension was sought because the petitioner's daughter was to take Board examinations of Class XII. It was also pointed out, that under the transfer policy/guidelines, in case daughter of a judicial officer is to take Board/University examinations, the officer is not to be transferred till the end of the academic session. Having submitted the aforesaid representation, it is the case of the petitioner, that she contacted respondent no.3 - Justice 'A', in his capacity as Administrative Judge of her Sessions Division, and pleaded with him that her transfer be deferred for the sake of her daughter, who was to take the Class XII Board examination. In the pleadings the petitioner asserted, that respondent no.3 mockingly reacted to the petitioner's request by telling her that she had not fulfilled his desires, she had not visited his residence alone to meet him even once, and therefore, this order of transfer was before her. He further told the petitioner, that he would finish her career

completely. It is submitted that the petitioner's representation dated 9.7.2014, was declined on 11.7.2014.

8. All the facts narrated in the foregoing paragraph have been denied by respondent no.3 in his counter-affidavit. In response to the above averments, it is denied that respondent no.3 ever issued any instructions to the District Judge, District Judge (Vigilance) or the District Registrar in regard to surveillance of the professional work of the petitioner. It is denied, that the actions of respondent no.3, were responsible for the petitioner's harassment. Justice 'A' has denied having ever spoken to the officers referred to by the petitioner, with reference to the petitioner, on any of the issues raised by her. On the allegation of the petitioner's intentional transfer to Sidhi in July, 2014, the Registrar General of the High Court has filed an affidavit dated 17.11.2014 acknowledging, that the exercise of annual transfers was carried out in March, 2014, but the petitioner was transferred in July, 2014. It is sought to be explained, that at the relevant time, the Transfer Committee of the High Court comprised of two senior Judges, which recommended the transfer of two Additional District & Sessions Judges, namely, Shri Manoj Kumar Tiwari and Shri Rajeev Kumar Singh, to Sidhi in March 2014. The

recommendation of the Committee was accepted by the Chief Justice of the High Court, whereupon the said officers were transferred to Sidhi. Reciprocally, no Additional District and Sessions Judge was transferred out of Sidhi, at that juncture. The above transfers had been made on the basis of a request made by the District and Sessions Judge, Sidhi to handle the huge pendency of cases at Sidhi. Despite the transfer of two Additional District and Sessions Judges referred to above, the District and Sessions Judge, Sidhi made another request through his communication dated 9.6.2014 to post another two Additional District and Sessions Judges, at Sidhi. This requirement expressed by the District and Sessions Judge, Sidhi was considered by the Transfer Committee, along with similar other requests from other Sessions Divisions. On a fresh consideration, the Transfer Committee recommended the transfer of 28 judicial officers including 6 Additional District & Sessions Judges. The Chief Justice of the High Court approved the recommendations made by the Transfer Committee. The transfer of the petitioner-Addl.D&SJ 'X' to Sidhi accordingly materialized. It is submitted that all the transfers, including that of the petitioner, were made in administrative exigencies, and not on extraneous

consideration. Insofar as the representation made by the petitioner, dated 9.7.2014 seeking cancellation/deferment of order of her transfer is concerned, it is pointed out, that the same was placed before the Transfer Committee. The Transfer Committee, vide its resolution dated 11.7.2014, recommended the rejection of the representation. The said recommendation was approved by the Chief Justice of the High Court on 11.7.2014 itself. With reference to the petitioner's representation dated 11.7.2014, it is pointed out, that the same was also placed before the Transfer Committee. The Transfer Committee vide its resolution dated 14.7.2014, recommended the rejection of the second representation. The recommendation made by the Transfer Committee, was again approved by the Chief Justice of the High Court on 14.7.2014. It is pointed out, that on the very next day, i.e., 15.7.2014, the petitioner tendered her resignation.

9(i). The next component of the narration in the writ petition, relates to the measures adopted by the petitioner. In this behalf, it is asserted, that the petitioner along with her husband traveled to Jabalpur on 1.6.2014. The sole purpose was to discuss the afore-stated issues with a senior Judge of the High Court. After the petitioner narrated her version to the senior Judge, she was

informed by the senior Judge, that he knew respondent no.3 – Justice ‘A’, and promised to intervene in the matter. He assured the petitioner, that he would arrange a meeting between the petitioner and respondent no.3 at Gwalior (during a forthcoming marriage in the 2nd week of June, 2014).

(ii). From 11.4.2014 to 14.7.2014, the petitioner claims that she spoke to the Private Secretary to the Chief Justice of the High Court, for seeking an audience with the Chief Justice of the High Court. According to the pleadings in the writ petition, on 13.7.2014, the Private Secretary informed the petitioner that the Chief Justice had refused to give her an appointment. The Private Secretary however reassured her, that he would make yet another effort to procure her an appointment for the following day, and was hopeful to manage the same. He had also informed the petitioner that he would convey the outcome “early next morning”. On 14.7.2014, since the petitioner did not receive any message from the Private Secretary, she sent a message to him inquiring about the outcome of his efforts. Learned counsel, during the course of hearing, submitted that the Private Secretary did not contact the petitioner thereafter. In support of the assertion, that the petitioner was seeking an appointment with

the Chief Justice of the High Court, it is asserted, that as the Private Secretary was hopeful of getting her an audience with the Chief Justice, she purchased two railway tickets for 14.7.2014 to travel from Gwalior to Jabalpur, in the company of her husband. These tickets were in addition to the tickets purchased by her to make a similar journey on 11.7.2014 to meet senior Judges of the High Court. Copies of both sets of tickets have been appended to the writ petition.

(iii). It is the pleaded case of the petitioner, that on the following day, after the petitioner met respondent no.3 - Justice 'A' i.e., on 11.7.2014, the petitioner visited a number of senior Judges of the High Court. She was advised to make another representation seeking deferment of her transfer, which she did on 11.7.2014 itself. Some of them urged the petitioner to have faith in the system, and to await the outcome of her second representation. The petitioner's second representation, was declined through a communication dated 11.7.2014.

10. According to the petitioner, having been subjected to victimization and harassment, the petitioner submitted her resignation from the post of Additional District and Sessions Judge, on 15.7.2014. The aforesaid resignation was addressed to

the Registrar General of the High Court. In her resignation, the petitioner expressly mentioned about her elder daughter studying in Class XII. It was submitted, that no reference to the sexual harassment suffered by her was made in the resignation letter, as the same would have been embarrassing for the petitioner. It was pointed out that the resignation submitted by the petitioner, was accepted on 17.7.2014 by the Legal and Legislative Work Department of the State Government. On the issue of the petitioner's resignation, the position explained in the reply filed on behalf of respondent no.1 is, that the petitioner's resignation was received in the office of the Registrar General of the High Court on 15.7.2014. The same was placed for consideration of the Chief Justice of the High Court on 16.7.2014. The Chief Justice recommended the acceptance of the resignation to the State Government. The State Government accepted the petitioner's resignation on 17.7.2014.

11. Having suffered extreme vilification at the hands of her superiors, for having not been afforded even an opportunity of being able to express her difficulties, the petitioner sent a representation to the President of India, the Chief Justice of India and the Chief Justice of the High Court on 1.8.2014. In her

representation, the petitioner *inter alia* sought the following reliefs:

- “1. Appropriate action be taken, after a fact-finding.
2. Re-consider the circumstances under which the Petitioner was coerced and exerted a great duress upon, until the only option she had was to resign.
3. Institute an appropriate mechanism for redressal of grievances like the above, of sub-ordinate services judicial officers.”

12. Another relevant fact, which has not been disclosed in the writ petition, and which has emerged from the reply filed on behalf of respondent no.1-the Registrar General of the High Court, needs to be recorded here to complete the sequence of events. It is pointed out on behalf of respondent no.1, that the petitioner had never disclosed the factum of sexual harassment in any of the numerous communications addressed by her to the High Court. It is pointed out, that the factum of sexual harassment had not even been incorporated in the petitioner's resignation letter. In the reply filed by respondent no.1, it is sought to be asserted, that the allegations of sexual harassment were recorded by the petitioner, for the first time, in her representation dated 1.8.2014, which was addressed to the Chief Justice of India. It is also sought to be asserted, in the reply filed on behalf of respondent no.1, that the nature of allegations of sexual harassment levelled by

the petitioner came to the knowledge of the Chief Justice of the High Court through a newspaper item published on 4.8.2014 in the Times of India. It is averred in the reply filed on behalf of respondent no.1, that respondent no.3 - Justice 'A', addressed a letter to the Chief Justice of the High Court with reference to the news item dated 4.8.2014. The news item as well as the letter received from respondent no.3 were sent by the Chief Justice of the High Court, by a special messenger, to the Chief Justice of India. Respondent no.1, i.e., the Registrar General of the High Court, on being directed by the Chief Justice of the High Court, issued the following press release on 4.8.2014:

"PRESS RELEASE

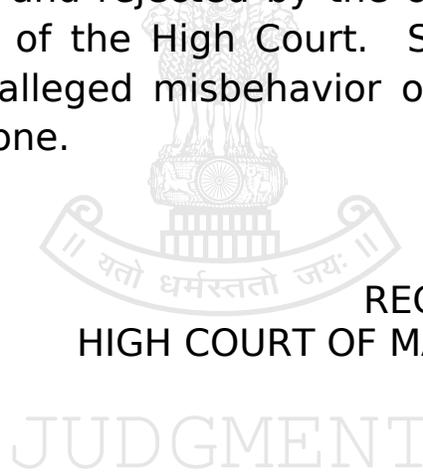
This is with regard to news item published in daily newspaper 'Times of India' dated 04.08.2014 reporting that a lady Judicial Officer posted as Additional District Judge, Gwalior had to resign from judicial service due to alleged harassment by a High Court Judge. It has been reported that when the lady Judicial Officer sought appointment with Hon'ble the Chief Justice to apprise him of the factual position, the same was declined. This is a distorted version.

As a matter of fact, she sought appointment telephonically through Principal Private Secretary (PPS) to Hon'ble the Chief Justice, after she had already tendered her resignation which was forwarded to the State Government for necessary action. In the given situation, she was informed by the PPS to submit a formal

representation, if advised, in the matter. However, no representation has so far been made by her.

In the context of the news item, the concerned High Court Judge faxed a confidential letter to Hon'ble the Chief Justice which was received on 4th August, 2014 in the morning. Hon'ble the Chief Justice has forwarded a copy of the said letter to Hon'ble the Chief Justice of India with comments.

The lady Ex-Judicial Officer, who was posted at Gwalior since August, 2011 was transferred in July, 2014 to Sidhi on administrative grounds. Her two representations seeking cancellation of the transfer on the ground of education of her daughters were duly considered and rejected by the concerned Administrative Committee of the High Court. She has not represented about the alleged misbehavior or harassment caused to her by anyone.



Sd/-
(VED PRAKASH)
REGISTRAR GENERAL
HIGH COURT OF MADHYA PRADESH
JABALPUR
04.08.2014"

(emphasis is ours)

The aforesaid press release has been extracted hereinabove so as to avoid any further narration on the aforesaid subject.

13. According to the averments made in the reply filed on behalf of the Registrar General of the High Court, a sealed envelope was received from the office of the Chief Justice of India in the High Court on 7.8.2014. From the record made available, it

is apparent that the Chief Justice of the High Court, keeping in view the sensitivity and seriousness of the matter, invited the two senior most judges of the High Court and the Registrar General of the High Court. All decisions in the matter were made collectively, in the best interest of all concerned. In furtherance of the communication received from the Chief Justice of India, the Chief Justice of the High Court constituted a two-member senior judges Enquiry Committee (one of whom was a lady judge), to make a confidential and discreet inquiry, and to submit a report. A senior lady Additional District and Sessions Judge, was nominated by the Chief Justice of the High Court, for secretarial assistance of the “two-Judge Committee”.

14. Consequent upon the nomination of the “two-Judge Committee”, the petitioner received (via e-mail) a notice from the Secretary of the Committee constituted by the Chief Justice of the High Court on 12.8.2014, requiring her to appear for a preliminary inquiry before the “two-Judge Committee” on 19.8.2014 at 10.30 a.m. The petitioner responded to the aforesaid notice vide her reply dated 14.8.2014 (via e-mail and speed post) requesting for information, as to under what authority of law the “two-Judge Committee” had been constituted. In order to ensure, that the

deliberations assigned to the Committee constituted by the Chief Justice of the High Court were fair, the petitioner, through her above reply dated 14.8.2014, requested that administrative functions be withdrawn from respondent no.3 - Justice 'A'. She also sought the transfer of the District Judge, the District Judge (Inspection) and the District Registrar posted at Gwalior, so that her witnesses could depose freely and fairly before the "two-Judge Committee". In a response dated 14.8.2014 (sent via e-mail), the petitioner was informed, that the Chief Justice of the High Court had set up the "two-member Committee" to conduct a preliminary inquiry into the allegations levelled against respondent no.3. On 19.8.2014, the petitioner submitted her second reply (via e-mail as also via speed post) stating that her request for withdrawal of administrative work from respondent no.3 - Justice 'A' and her request for transfer of judicial officers from Sessions Division, Gwalior had remained unaddressed. She also pointed out, that the procedure envisaged by the Supreme Court in the decision rendered in C. Ravichandran Iyer v. Justice A.M. Bhattacharjee (1995) 5 SCC 457, was not being followed, inasmuch as the Chief Justice of the High Court was to conduct a discreet inquiry at his own and that she could not be required to

appear before the “two-Judge Committee” for a preliminary inquiry. In support of the original complaint submitted by the petitioner, on this occasion she also enclosed a sworn affidavit, affirming the factual position expressed in her complaint.

15. The determination of the present controversy, will emerge from the factual position projected by the rival parties which has been summarized above.

16. It would be pertinent to mention, that the main submission advanced at the hands of the learned counsel for the petitioner was, that the proceedings being conducted in the matter, are not in consonance with the “in-house procedure” adopted by this Court for taking suitable remedial action against judges, who by their acts of omission or commission, do not follow the accepted values of judicial life, including the ideals expressed by the Supreme Court in the “Restatement of Values of Judicial Life”. The projection of the aforesaid contention, we felt, would not require an insight into the allegations made by Addl.D&SJ ‘X’, or even the response of Mr. Justice ‘A’. However, the submissions, as they have emerged during the course of hearing, reveal that the same also require to be considered. We also felt, after hearing submissions advanced on behalf of the rival parties,

that the steps taken by the Chief Justice of the High Court, also needed a closer examination, for an effective and fruitful consideration of the controversy in view of the sensitivity and seriousness of the matter. We have, accordingly, briefly traced the allegations made by the petitioner, as also, the defence of respondent no.3. We have also ventured to narrate the steps taken by the Chief Justice of the High Court, consequent upon the petitioner's complaint being forwarded to him by the Chief Justice of India. As a note of caution, we would like to record, that our recording of the events, may not be taken as the last word on the matter, we may have noticed certain facts in a manner which may have overlooked the sensitivity with which the party concerned had viewed or projected them. We may have also missed certain finer points, which could, on an analysis of facts, result in quite a different conclusion on their holistic examination. The issue of sexual harassment has a variety of fine connotations. Its evaluation may sometimes depend upon the sensitivity of the person concerned. And also whether, the perception of the harassed individual was known to the one against whom the accusing finger is pointed.

17. Every day is a matter of learning. Hearing of submissions in this case, we may say, was a matter of further understanding the sensitivities involved in a controversy of the present nature. We may venture to demonstrate this, by noticing a verbal exchange, during the course of hearing, between the counsel for the petitioner and that for the High Court. While the learned counsel representing the High Court was on “his” legs, learned counsel for the petitioner interjected to express “her” point of view. All through, during the process of hearing, submissions were advanced in a lively and respectful manner, and pointedly on the subject under consideration. Feeling that the thought being projected by the learned counsel was being disturbed by the intervention, the Bench accordingly exhorted learned counsel, to go on unmindful of the interruption. Learned counsel for the High Court, well-meaning and deferential as he always is, responded by observing, “The interjections by the learned senior counsel for the petitioner, are always delightful”. Learned senior counsel for the petitioner, had serious objection to the term, “delightful” used, with reference to “her”. She questioned, the use of the term, “delightful” by posing to the learned senior counsel, whether similar interjections by men, were also

considered by him as delightful. Why then, she questioned, should “her” interjection be found “delightful”. In expressing her view, she went on to describe the response of the learned senior counsel as “sexually coloured”. Having given our thoughtful consideration to the response, of the learned counsel for the petitioner, we may only say, that she may well be right. There is a lot to be learnt, from what she innocuously conveyed. Her sensitivity to the issue, one may confess, brought out to us, a wholly different understanding on the subject. It is, therefore, that we have remarked above, that the evaluation of a charge of sexual harassment, would depend on the manner in which it is perceived. Each case will have to be decided on its own merits. Whether the perception of the harassed individual, was conveyed to the person accused, would be very material, in a case falling in the realm of over-sensitivity. In that, it would not be open to him thereafter, to defend himself by projecting that he had not sexually harassed the person concerned, because in his understanding the alleged action was unoffending.

18. Therefore, as a matter of caution, we desire to expressly record, that the facts taken into consideration by us, are for the limited purpose of the submissions advanced at the hands of the

learned counsel for the petitioner, to consider whether the procedure being followed in the present controversy, is in consonance with the “in-house procedure” adopted by this Court, as also, whether the procedure adopted by the Chief Justice of the High Court, would meet the ends of justice.

19. Before dwelling upon the pointed issues canvassed before us, we would venture to briefly record the sequence of events which led to the adoption by this Court, of the “in-house procedure”. It is necessary for us to do so, because the contentions advanced by the learned counsel for the petitioner were founded on the “in-house procedure”, whereas, it was the contention in response, that the same was not justiciable, and as such, the present writ petition is not maintainable in law.

20. Amongst the first encounters, to an investigation into the conduct of a judge, can be traced from a statement made to the Bar by the then Chief Justice of India, Mr. Justice Sabyasachi Mukherjee on 20.7.1990, with reference to the allegations levelled against Mr. Justice V. Ramaswami, who at that juncture, was a sitting Judge of the Supreme Court of India. An extract of the statement made to the Bar is being reproduced hereunder:

“Re: Ramaswami, J.
CJI’s Statement to the Bar

In the beginning of May, 1990, some learned advocates of this Court drew my attention to certain newspapers about the audit report investigating the expenses incurred in furnishing the residence of a former Chief Justice of the Punjab & Haryana High Court, namely, Shri V. Ramaswami, who is now a sitting Judge of this court. I was requested by the learned lawyers to take action suo-motu. The matter was mentioned more than one. On 1st May, 1990. I had received a communication from the editor of a magazine enclosing therewith a copy of April 90 issue of the magazine The Lawyers, stating that it contained the full text of the audit report of the Chandigarh Administration. Thereafter after, the learned Attorney General, Sir. Soli Sorabjee, the former Attorney General, Sri Parasaran, Mr. Venugopal, the president of the Supreme Court Bar Association, and Dr. Y.S. Chitale, former President of the Supreme Court Bar association, also met me and drew my attention to these reports and expressed concern on the contents of the publications. The Union Minister of Law and Justice called on me and expressed the concern of the members of parliament about the alleged extravagance by Justice Ramaswami and the contents of the report, while working as the Chief Justice of the Punjab and Haryana High Court. Sharing their concern, I had told the Law Minister and have since assured the learned Attorney General and other members of the Bar that I would look into the matter.

Legally and constitutionally the Chief Justice of India, as such, has no right or authority to inquire into the conduct of a sitting Judge of the Supreme Court. However, the Chief justice of India, as the head of the Judicial Family has, I believe, the duty and the responsibility to maintain the judicial propriety and attempts to secure the confidence of the public in the working of the judicial process.

This was an unprecedented and an embarrassing situation. It called for caution and establishment of a salutary convention. I have obtained from the Chief Justice of Punjab and Haryana High Court the necessary papers.

There are three kinds of reports (i) Reports submitted by the Internal Audit Cell of the High Court (ii) Fact-finding Reports submitted by District and Sessions Judges (Vigilance) both of Punjab and Haryana; and (iii) Reports and audit-paras submitted by the official of the Accountant Generals office to the High Court for reply. The reports and audit paras last mentioned seek clarifications and justifications in respect of the transactions which prime facie appeared to be irregular.

I have looked into it and then arrived at a certain tentative impression it is not necessary to recapitulate in detail, the alleged irregularities I understand from the authorities of the High Court that the officials involved in the alleged irregularities have been suspended and departmental inquiries have been instituted against them. The final result of these departmental inquiries is awaited. In the meantime, I took Brother Ramaswami into confidence and made known to him the contents of the audit reports with a view to ascertaining his position in relation to the disclosures made in the reports. He has given his version. I have also requested Brother Ramaswami to communicate his views to the Registrar, High Court of Punjab and Haryana so that the High Court may reply to the audit objections raised by the Government.

I understand that the High Court had directly sought Brother Ramaswami's clarifications with regard to certain audit objection and he has written to the officers of the High Court in this behalf. The proceedings, as mentioned before, against some of the officers of High Court on alleged irregularities are still pending. In respect of some of the irregularities which I have considered and the tendency of the departmental inquiries against the suspended officers, I am of the opinion that it would be appropriate to wait for a closer examination of the replies to the audit objections and the various queries submitted by the High Court to Brother Ramaswami before one can come to a final conclusion.

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The Supreme Court must uphold the rule of law. It is, therefore, necessary that those who uphold the rule of law

must live by law and judges must, therefore, be obliged to live according to law. The law, procedure and the norms applicable in this case, enjoin that the expenses incurred by the Court for the Judges must be according to the rules, norms and the practice. No man is above law or the rules. The Judges either of the Supreme Court or of the High Courts and the Chief Justices are all subject to the rule of law and procedure like any other citizen of this country and must abide by the norms and regulation prescribed inasmuch as these and to the extent are applicable to them I always thought this was clear and needed no reiteration. We must, therefore, ensure that there is no conduct of the Judges, which affects the faith of the people that Judges do not live according to law. Judges cannot afford to be involved in disputes, which have to determine the question whether the Judges while functioning as Judges or Chief Justices have attempted to subvert the law either designedly or in utter negligence or recklessness.

In this matter, the questions involved are, namely, (i) whether the Chief Justice was entitled to the expenses of his telephone at Madras because Chandigarh was declared a disturbed area;

(ii) Whether the Chief Justice was obliged to obtain leave to avail the facility of LTC;

(iii) Whether the Chief Justice was entitled to direct the cars to be taken to Madras when he was on vacation from Chandigarh for the reasons mentioned by him;

(iv) Whether the silver maces ordered by the High Court have been done at the rate similar to the rate applied in respect of those supplied to the Madras High Court, and

(v) Whether even though the Judges of the Punjab and Haryana High Court did not approve the idea of having maces for each individual Judge, the Chief Justice was entitled to direct the purchase of these maces. These are the matters on which interpretation of the rules or on the permission or relaxation of rules, certain consequences will follow, and if the Chief Justice was not so entitled or these could not be sanctioned as has been done under the

circumstances mentioned in the aforesaid objections and communications, reimbursement or recovery would be directed. These matters, therefore, will have to await adjudication by the appropriate authorities, namely, the Government and the sanctioning authorities dealing with audit objections, in respect of the permissions sought. Though one would like to think that there has been extravagance and ostentatiousness but these by the selves do not involve determining questions of moral or legal impropriety of a judge functioning as a Judge in the Court.

But there are some other aspects involved in this matter, namely, the questions of not accounting for all the furnitures or items that were in the residence and office of the Chief Justice, the alleged replacement of superior quality items by inferior quality items, the missing items and the splitting up of the bills in order to have the sanction of the authorities or to conform to the rules, are the matters which are also pending determination and adjudication.

Involvement in any investigation on the conduct of a sitting Supreme Court Judge on such matters as aforesaid is embarrassing in the circumstances and the background in which these questions have arisen in the instant case. For one who should attempt to uphold the rule of law, it is embarrassing to be involved in such a dispute. But no final decision on this aspect can be arrived at until the investigations and inquiries are completed. I have, on these aspects after looking into the matter and the points involved, no doubt that those who aspire to uphold the rule of law must strive to live according to law and they necessarily expose the selves to the danger of perishing by law. I am aware and deeply conscious that in certain circumstances somebody may be a victim of certain situation. I was constrained, in those circumstances, to advise Brother Ramaswami to desist from discharging judicial functions so long as the investigations continued and his name was cleared on this aspect.

I wrote to Brother Ramaswami on 18th July 1990 rendering my aforesaid advice. I have also conveyed to him my anguish in tendering this advice and I have requested him

to please be on leave until the investigations on the aforesaid conduct are completed.

On 18th July, 1990 after receipt of my letter, Brother Ramaswami has applied for leave for six weeks in the first instance with effect from 23rd July, 1990. I have directed the office to process his application for leave.

Since I had assured the learned Attorney General, the Law Minister, the president of the Bar Association and other that I will look into it, I thought I must convey to you result of my looking into it.”

It would be relevant to mention, that no further action was taken by the Chief Justice of India, in furtherance of the administrative authority vested in him, in the matter relating to the allegations levelled against Justice V. Ramaswami. Impeachment proceedings were initiated against Justice V. Ramaswami under Article 124 of the Constitution of India. The outcome of the same, is inconsequential to the present controversy.

21. Contextually, reference needs to be made, to the resolution passed by the Bombay Bar Association on 1.3.1995 by a majority of 185 out of 207 permanent members, demanding the resignation of Justice A.M. Bhattacharjee, the then Chief Justice of Bombay High Court. A writ petition came to be filed in this Court, seeking an appropriate writ, order or direction to restrain the Bar Council of Maharashtra and Goa, the Bombay Bar Association, and the Advocates' Association of Western India, from coercing Justice

A.M. Bhattacharjee from resigning the office held by him. The petitioner in the above case, had also made a prayer, that the allegations levelled against Justice A.M. Bhattacharjee be required to be investigated by the Central Bureau of Investigation, and if the same were found to be true, a direction be issued to the Speaker of the Lok Sabha, to initiate action for the removal of Justice A.M. Bhattacharjee, under Article 124 read with Article 218 of the Constitution of India, and the Judges (Inquiry) Act, 1968. While deliberating upon the aforesaid issue, this Court *inter alia* held as under:

“40. Bearing all the above in mind, we are of the considered view that where the complaint relates to the Judge of the High Court, the Chief Justice of that High Court, after verification, and if necessary, after confidential enquiry from his independent source, should satisfy himself about the truth of the imputation made by the Bar Association through its office bearers against the Judge and consult the Chief Justice of India, where deemed necessary, by placing all the information with him. When the Chief Justice of India is seized of the matter, to avoid embarrassment to him and to allow fairness in the procedure to be adopted in furtherance thereof, the Bar should suspend all further actions to enable the Chief Justice of India to appropriately deal with the matter. This is necessary because any action he may take must not only be just but must also appear to be just to all concerned, i.e., it must not even appear to have been taken under pressure from any quarter. The Chief Justice of India, on receipt of the information from the Chief Justice of the High Court, after being satisfied about the correctness and truth touching the conduct of the Judge, may tender such advice either directly or may

initiate such action, as is deemed necessary or warranted under given facts and circumstances. If circumstances permit, it may be salutary to take the Judge into confidence before initiating action. On the decision being taken by the Chief Justice of India, the matter should rest at that. This procedure would not only facilitate nipping in the bud the conduct of a Judge leading to loss of public confidence in the courts and sustain public faith in the efficacy of the rule of law and respect for the judiciary, but would also avoid needless embarrassment of contempt proceedings against the office bearers of the Bar Association and group libel against all concerned. The independence of judiciary and the stream of public justice would remain pure and unsullied. The Bar Association could remain a useful arm of the judiciary and in the case of sagging reputation of the particular Judge, the Bar Association could take up the matter with the Chief Justice of the High Court and await his response for the action taken thereunder for a reasonable period.

41. In case the allegations are against Chief Justice of a High Court, the Bar should bring them directly to the notice of the Chief Justice of India. On receipt of such complaint, the Chief Justice of India would in the same way act as stated above qua complaint against a Judge of the High Court, and the Bar would await for a reasonable period the response of the Chief Justice of India.

42. It would thus be seen that yawning gap between proved misbehaviour and bad conduct in consistent with the high office on the part of a non cooperating Judge/Chief Justice of a High Court could be disciplined by self-regulation through in-house procedure. This in-house procedure would fill in the constitutional gap and would yield salutary effect. Unfortunately, recourse to this procedure was not taken in the case at hand, may be, because of absence of legal sanction to such a procedure."

22. In furtherance of the directions issued in C.Ravichandran Iyer's case (supra), this Court constituted a committee comprising

of three Judges of this Court, namely, Justices S.C. Agrawal, A.S. Anand (as he then was), S.P. Bharucha (as he then was), and the then two senior-most Chief Justices of High Courts, i.e., Justices P.S. Misra and D.P. Mohapatra (of the Andhra Pradesh High Court and the Allahabad High Court, respectively), to lay down the “in-house procedure”, for taking suitable remedial action against judges, who by their acts of omission or commission, do not follow the accepted values of judicial life, including the ideals expressed by the Supreme Court in the “Restatement of Values of Judicial Life”. The committee submitted its report on 31.10.1997. The same was adopted with amendments, in a Full Court Meeting of the Supreme Court of India, on 15.12.1999. In the afore-stated report, three sets of procedure for taking such suitable remedial action against judges were laid down. The first, related to Judges of the High Courts, the second, to Chief Justices of the High Courts, and the third, to Judges of the Supreme Court. Insofar as the present controversy is concerned, since the same relates to the allegations made against a sitting Judge of the Madhya Pradesh High Court, only the “in-house procedure” pertaining to Judges of the High Courts is relevant. The main submission advanced at the hands of the learned counsel for the petitioner is

also based on the same. The “in-house procedure”, as determined with reference to Judges of the High Court, is accordingly being extracted hereunder:

“HIGH COURT JUDGE:

A complaint against a Judge of a High court is received either by the Chief justice of that High Court or by the Chief Justice of India (CJI). Some times such a complaint is made to the President of India. The complaints that are received by the President of India are generally forwarded to the CJI. The Committee suggests the following procedure for dealing with such complaints:-

(1) Where the complaint is received against a Judge of a High Court by the Chief Justice of that High Court, he shall examine it. If it is found by him that it is frivolous or directly related to the merits of a substantive decision in a judicial matter or does not involve any serious complaint of misconduct or impropriety, he shall file the complaint and inform the CJI accordingly. If it is found by him that the complaint is of a serious nature involving misconduct or impropriety, he shall ask for the response thereto of the Judge concerned. If on a consideration of the allegations in the complaint in the light of the response of the Judge concerned, the Chief Justice of the High Court is satisfied that no further action is necessary he shall file complaint and inform the CJI accordingly. If the Chief Justice of the High Court is of the opinion that the allegations contained in the complaint need a deeper probe, he shall forward to the CJI the complaint and the response of the Judge concerned along with his comments.

(2) When the complaint is received by the CJI directly or it is forwarded to him by the President of India the CJI will examine it. If it is found by him that it is either frivolous or directly related to the merits of a substantive decision in a judicial matter or does not involve any serious complaint of misconduct or impropriety, he shall file it. In other cases the complaint shall be sent by the CJI to the Chief Justice of the concerned High court for his comments. On

the receipt of the complaint from CJI the Chief Justice of the concerned High court shall ask for the response of the judge concerned. If on a consideration of the allegations in the complaint in the light of the response of the Judge concerned the Chief justice of the High Court is satisfied that no further action is necessary or if he is of the opinion that the allegations contained in the complaint need a deeper probe, he shall return the complaint to the CJI along with a statement of the response of the Judge concerned and his comments.

(3) After considering the complaint in the light of the response of the judge concerned and the comments of the Chief justice of the high court, the CJI, if he is of the opinion that a deeper probe is required into the allegations contained in the complaint, shall constitute a three member Committee consisting of two Chief justices of High Courts other than the High Court to which the Judge belongs and one High Court Judge. The said Committee shall hold an inquiry into the allegations contained in the complaint. The inquiry shall be in the nature of a fact finding inquiry wherein the Judge concerned would be entitled to appear and have his say. But it would not be a formal judicial inquiry involving the examination and cross-examination of witnesses and representation by lawyers.

(4) For conducting the inquiry the Committee shall devise its own procedure consistent with the principles of natural justice.

(5)(i) After such inquiry the Committee may conclude and report to the CJI that (a) there is no substance in the allegations contained in the complaint, or (b) there is sufficient substance in the allegations contained in the complaint and the misconduct disclosed is so serious that it calls for initiation of proceedings for removal of the Judge, or (c) there is substance in the allegations contained in the complaint but the misconduct disclosed is not of such a serious nature as to call for initiation of proceedings for removal of the Judge.

(ii) A copy of the Report shall be furnished to the judge concerned by the Committee.

(6) In a case where the Committee finds that there is no substance in the allegations contained in the complaint, the complaint shall be filed by the CJI.

(7) If the Committee finds that there is substance in the allegations contained in the complaint and misconduct disclosed in the allegations is such that it calls for initiation of proceedings for removal of the Judge, the CJI shall adopt the following course:-

(i) the Judge concerned should be advised to resign his office or seek voluntary retirement;

(ii) In a case the judge expresses his unwillingness to resign or seek voluntary retirement, the chief justice of the concerned High Court should be advised by the CJI not to allocate any judicial work to the judge concerned and the President of India and the Prime Minister shall be intimated that this has been done because allegations against the Judge had been found by the Committee to be so serious as to warrant the initiation of proceedings for removal and the copy of the report of the Committee may be enclosed.

(8) If the Committee finds that there is substance in the allegations but the misconduct disclosed is not so serious as to call for initiation of proceedings for removal of the judge, the CJI shall call the Judge concerned and advise him accordingly and may also direct that the report of the Committee be placed on record.”

23. Next in sequence, we may advert to the letter dated 4.8.2008 written by the then Chief Justice of India, Mr. Justice K.G. Balakrishnan, to the then Prime Minister Mr. Manmohan Singh, recommending the removal of Mr. Justice Soumitra Sen, then a

13. Since I felt that a deeper probe was required to be made into the allegations made against Justice Soumitra Sen, to bring the matter to a logical conclusion, I constituted a three Member Committee consisting of Justice A.P. Shah (Chief Justice, Madras High Court), Justice A.K. Patnaik (Chief Justice, High Court of Madhya Pradesh) and Justice R.M. Lodha (Judge, Rajasthan High Court), as envisaged in the 'In-House Procedure' adopted by Supreme Court and various High Courts, to conduct a fact finding enquiry, wherein the Judge concerned would be entitled to appear and have his say in the proceedings.

14. The Committee submitted its report dated 1st February, 2008, after calling for relevant records and considering the submission made by Justice Soumitra Sen, who appeared in-person before the Committee. The Committee inter alia concluded that:

(a) Shri Soumitra Sen did not have honest intention right from the year 1993 since he mixed the money received as a Receiver and his personal money and converted Receiver's money to his own use:

(b) There has been misappropriation (at least temporary) of the sale proceeds since:

(i) he received Rs. 24,57,000/- between 25th February 1993 to 10th January, 1995 but the balance in the Account No. 01SLPO632800 on 28th February, 1995 was only Rs. 8,83,963.05.

(i) a sum of Rs. 22,83,000/- was transferred by him from that account to Account No. 01SLPO813400 and, thereafter, almost entire amount was withdrawn in a couple of months reducing the balance to the bare minimum of Rs. 811.56, thus, diverting the entire sale proceeds for his own use and with dishonest intention.

© he gave false explanation to the court that an amount of Rs. 25,00,000/- was invested from the account where the sale proceeds were kept, whereas, in fact, the amount of Rs. 25,00,000/- was withdrawn from Special Officer's

Account No. 01SLPO813400 and not from 01SLPO632800, in which the sale proceeds were deposited;

(d) mere monetary recompense under the compulsion of judicial order does not obliterate breach of trust and misappropriation of Receiver's funds for his personal gain;

(e) the conduct of Shri Soumitra Sen had brought disrepute to the high judicial office and dishonour to the institution of judiciary, undermining the faith and confidence reposed by the public in the administration of justice.

In the opinion of the Committee misconduct disclosed is so serious that it calls for initiation of proceedings for his removal.

15. A copy of the Report dated 6th February, 2008 of the Committee was forwarded by me to Justice Soumitra Sen and in terms of the In-House procedure, he was advised to resign or seek voluntary retirement. Thereupon, Justice Soumitra Sen made a detailed representation dated 25th February, 2008 seeking reconsideration of the decision of his removal and sought a personal hearing. On 16th March, 2008 a Collegium consisting of myself, Justice B.N. Agrawal and Justice Ashok Bhan (Seniormost Judges of Supreme Court) gave a hearing to Justice Soumitra Sen and reiterated the advice given to him to submit his resignation or seek voluntary retirement on or before 2nd April, 2008. However, vide his letter dated 26th March, 2008 Justice Soumitra Sen expressed his inability to tender resignation or seek voluntary retirement.

In view of the foregoing, it is requested that proceedings for removal of Justice Soumitra Sen be initiated in accordance with the procedure prescribed in the Constitution.

With warm regards,

Yours sincerely

Sd/-

(K.G. Balakrishnan)

Hon'ble Dr. Manmohan Singh,
Prime Minister of India,
7, Race Course Road,
New Delhi-110011.”

Based on the communication addressed by the Chief Justice of India, impeachment proceedings were actually initiated against Mr. Justice Soumitra Sen, under Article 124 of the Constitution of India. Consequent upon his resignation, during the course of deliberation on the impeachment proceedings in Parliament, the impeachment proceedings were dropped as having been abated.

24. It is, therefore, apparent that the seeds of the “in-house procedure” came to be sown in the judgment rendered by this Court in C. Ravinchandran Iyer’s case (supra). It is also apparent, that actions have been initiated under the “in-house procedure”, which has the approval of the Full Court of the Supreme Court of India. And, based on the afore-stated “in-house procedure”, impeachment proceedings were actually initiated by the Parliament under Article 124 of the Constitution of India. There can therefore be no doubt whatsoever, that in the above situation, the “in-house procedure” is firmly in place, and its adoption for dealing with matters expressed by this Court in C. Ravichandran Iyer’s case (supra) is now a reality.

25. Despite the above conclusion, it is imperative to take into consideration the observations recorded by this Court in *Indira Jaising v. Registrar General*, Supreme Court (2003) 5 SCC 494, as under:

“In our constitutional scheme it is not possible to vest the Chief Justice of India with any control over the puisne Judges with regard to conduct either personal or judicial. In case of breach of any rule of the Code of Conduct, the Chief Justice can choose not to post cases before a particular Judge against whom there are acceptable allegations. It is possible to criticise that decision on the ground that no enquiry was held and the Judge concerned had no opportunity to offer his explanation particularly when the Chief Justice is not vested with any power to decide about the conduct of a Judge. There is no adequate method or machinery to enforce the Code of Conduct. Article 124 provides for appointment of Judges of this Court and also their removal. Similarly, Article 217 deals with the appointment and removal of the Judges of the High Court. In the Judges' Enquiry Act of 1968 provisions are made for investigation into misbehavior or incapacity of a Judge. It may be noted that since Judges of the superior Courts occupy very high positions, disciplinary proceedings which exist in the case of all other employees cannot be thought of.

The Committee referred to by the petitioner is stated to have been constituted as a part of In-House procedure. A Judge cannot be removed from his Office except by impeachment by a majority of the House and a majority of not less than 2/3rd present and voting as provided by Articles 124 and 217 of the Constitution of India. The Judges (Inquiry) Act, 1968 has been enacted providing for the manner of conducting inquiry into the allegation of judicial conduct upon a Motion of Impeachment sponsored by at least 100 Lok Sabha members or 50 Rajya Sabha members. The Presiding Officer of the concerned House has the power to constitute a Committee consisting of

three persons as enumerated therein. No other disciplinary inquiry is envisaged or contemplated either under the Constitution or under the Act. On account of this lacuna In-House procedure has been adopted for inquiry to be made by the peers of Judges for report to the Hon'ble the Chief Justice of India in case of a complaint against the Chief Justices or Judges of the High Court in order to find out truth of the imputation made in the complaint and that In-House inquiry is for the purpose of his own information and satisfaction. A report made on such inquiry if given publicity will only lead to more harm than good to the institution as Judges would prefer to face inquiry leading to impeachment. In such a case the only course open to the parties concerned if they have material is to invoke the provisions of Article 124 or Article 217 of the Constitution, as the case may be. It is not appropriate for the petitioner to approach this Court for the relief or direction for release of the Report, for what the Chief Justice of India has done is only to get information from peer Judges of those who are accused and the report made to the Chief Justice of India is wholly confidential. The said report is only for the purpose of satisfaction of the Chief Justice of India that such a report has been made. It is purely preliminary in nature, ad hoc and not final. If the Chief Justice of India is satisfied that no further action is called for in the matter, the proceeding is closed. If any further action is to be taken as indicated in the In-House procedure itself, the Chief Justice of India may take such further steps as he deems fit. Therefore, in the hierarchy of the courts, the Supreme Court does not have any disciplinary control over the High Court Judges, much less the Chief Justice of India has any disciplinary control over any of the Judges. That position in law is very clear. Thus, the only source or authority by which the Chief Justice of India can exercise this power of inquiry is moral or ethical and not in exercise of powers under any law. Exercise of such power of the Chief Justice of India based on moral authority cannot be made subject matter of a writ petition to disclose a report made to him."

A perusal of the observations made by this Court in the extract reproduced above, reveals that the existence of the “in-house procedure” is now an established means for inquiring into allegations levelled against a judge of a superior court, through his peers. It is a confidential inquiry for institutional credibility under the charge of the Chief Justice of India. And therefore, its affairs are to be kept out of public domain. The proceedings under the above procedure being sensitive, are required to be inaccessible to third parties. And therefore, the prayer seeking the disclosure of the report submitted on the culmination of the “in-house procedure” was declined. The object sought to be addressed through the “in-house procedure”, is to address concerns of institutional integrity. That would, in turn, sustain the confidence of the litigating public, in the efficacy of the judicial process.

26. It is impermissible to publicly discuss the conduct of a sitting judge, or to deliberate upon the performance of his duties, and even on/of court behaviour, in public domain. Whilst the “in-house procedure” lays down means to determine the efficacy of the allegations levelled, it is now apparent, that the procedure is not toothless, in the sense, that it can lead to impeachment of the

concerned judge under Article 124 of the Constitution of India. Such being the cause, effect and repercussions of the findings recorded during the course of the “in-house procedure”, this Court in *Indira Jaising’s* case (supra) declined to entertain the writ petition filed at the behest of a third party, seeking details of the proceedings, and the consequential report prepared by the committee of judges. But, that should not be understood to mean, that an individual concerned, who is called upon to subject himself/herself to the contemplated procedure, should be precluded or prevented from seeking judicial redress. It is now well understood, that an individual who subjects himself/herself to the jurisdiction of an authority, cannot turn around to find fault with it at a later juncture. If there is a fault, the same should be corrected, before one accepts to submit to the jurisdiction of the concerned authority. The submission of the petitioner in the present case, to the “two-Judge Committee”, would certainly have had the above effect. We are therefore satisfied to hold, that those who are liable to be affected by the outcome of the “in-house procedure”, have the right to seek judicial redressal, on account of a perceived irregularity. The irregularity may be on account of the violation of the contemplated procedure, or even

because of contemplated bias or prejudice. It may be on account of impropriety. The challenge can extend to all subjects on which judicial review can be sought. The objections raised on behalf of respondent no.3, in respect of the sustainability of the instant petition at the hands of Addl.D&SJ 'X', are therefore wholly untenable. The challenge to the maintainability of the instant writ petition, is accordingly declined.

27. The petitioner's pointed contention with reference to the procedure adopted, while giving effect to the "in-house procedure" approved by the Full Court of the Supreme Court, is with reference to the clear and categorical jurisdictional authority, exclusively vested with the Chief Justice of the concerned High Court. According to learned counsel, the Chief Justice of the High Court is, to examine the veracity of the allegations, at his own. It was accordingly submitted, that the Chief Justice of the High Court, had neither the jurisdiction nor authority, to constitute a committee of judges to hold a fact finding inquiry, by recording statements of witnesses. Pointing out to the procedure contemplated in paragraph (1) of the "in-house procedure" (extracted in paragraph 22 herein above), it was submitted, that where the complaint made against a sitting judge of the High

Court is received by the Chief Justice of the High Court, “he” is required to examine the same. On “his” examination, if the complaint is found to be frivolous or directly related to the merits of a substantive decision in a judicial matter, or if it does not involve serious allegations of misconduct or impropriety, “he” shall file the complaint and inform the Chief Justice of India accordingly. Alternatively, if it is found by “him”, that the complaint is of a serious nature involving misconduct or impropriety, “he” would seek the response of the concerned judge. Based on the complaint and the response, “the Chief Justice of the High Court” would take appropriate action, namely, “he” would file the complaint if “he” is satisfied that no further action is necessary. However, if “he” considers that the allegations need to be further probed, “he” would forward the complaint, and the response of the concerned judge, along with “his” comments to the Chief Justice of India. It was pointed out that the terms “he”, “his” or “him”, have a reference, exclusively to the Chief Justice of the concerned High Court.

28. Referring to paragraph (2) of the “in-house procedure” pertaining to a complaint against a sitting High Court Judge, i.e., in situations where the complaint is received by the Chief Justice

of India directly (or it is forwarded to him by the President of India), the Chief Justice of India may file the complaint at his own, if it is found by “him”, i.e., the Chief Justice of India, that it is either frivolous or directly related to the merits of a substantive decision in a judicial matter or does not involve any serious misconduct or impropriety. In other cases, the complaint shall be forwarded by the Chief Justice of India to the Chief Justice of the concerned High Court. On the receipt of such complaint, the Chief Justice of the High Court would seek the response of the concerned judge. The consideration at the hands of the Chief Justice of the High Court, is limited to an examination of the complaint in conjunction with the response of the concerned judge. Thereupon, the Chief Justice of the High Court could either be satisfied that no further action is called for, or “he” may entertain the opinion that the allegations contained in the complaint need a deeper probe. “he” shall return the complaint to the Chief Justice of India, along with the response of the concerned judge and “his” comments. It was pointed out, that even in paragraph (2) of the “in-house procedure” the terms “he” and “his”, have a reference exclusively to the Chief Justice of the High Court.

29. Based on paragraphs (1) and (2) of the “in-house procedure” pertaining to complaint against a sitting High Court Judge, it is the contention of the learned counsel for the petitioner, that the procedure does not envisage/contemplate, holding of a full fledged inquiry. The jurisdiction vested in the Chief Justice of the High Court, under the “in-house procedure”, according to learned counsel, is limited to seeking the response of the concerned judge, and thereupon, in case the allegations contained in the complaint require a deeper probe, the Chief Justice of the High Court, is to forward the complaint along with the response of the concerned High Court Judge, as well as his own comments, to the Chief Justice of India. It is therefore, the contention of the learned counsel for the petitioner, that constitution of the “two-Judge Committee”, to be assisted for secretarial purposes, by a senior lady Additional District Judge, was clearly beyond the authority and jurisdiction of the Chief Justice of the High Court, and that the same was in complete violation and derogation of the “in-house procedure” approved by the Full Court of the Supreme Court.

30. It was also the contention of the learned counsel for the petitioner, that the action of the “two-Judge Committee”

constituted by the Chief Justice of the High Court, requiring the petitioner to appear before the Committee, along with relevant documents in relation to the imputations levelled by her, was also impermissible. It was pointed out, that the “two-Judge Committee” had not only required the petitioner’s presence, but also that of her daughter. It is further submitted, that a communication was addressed by the “two-Judge Committee” to the petitioner’s husband, also requiring him to remain present before the Committee. All the afore-stated actions, according to the learned counsel for the petitioner, were in clear violation of the “in-house procedure”, approved by the Full Court of the Supreme Court.

31. During the course of hearing, learned counsel for the petitioner invited our attention, to the assertions made on behalf of respondent no.3, namely, that it was imperative for the “two-Judge Committee” constituted by the Chief Justice of the High Court, to verify the factual position, from the wife of the Chief Judicial Magistrate, Gwalior, the District Registrar, Gwalior, the District Judge (Inspection), Gwalior, as also, the District and Sessions Judge, Gwalior, since averments had been made with reference to all of them, in the complaint filed by the petitioner.

Responding to the aforesaid, it was submitted, that an inquiry extending to the persons referred to hereinabove, as also the staff attached to the petitioner, who could be witnesses, to the acts of omission and commission alleged against respondent no.3, were also clearly beyond the scope of “in-house procedure”.

32. It is also necessary for us to record, that the submissions advanced at the hands of the learned counsel for the petitioner, to demonstrate the responsibility of the Chief Justice of the High Court, with reference to the “in-house procedure”, was not contested by the learned counsel for the respondents. Whilst the stance adopted by the Registrar General of the High Court was, that the procedure adopted by the Chief Justice of the High Court, was based on the sensitivity involved in the matter. In the counter affidavit filed on behalf of the Registrar General of the High Court, it is sought to be averred, that even though the “two-Judge Committee” constituted by the Chief Justice of the High Court had commenced to inquire into the matter, but the report thereof was not submitted to the Chief Justice of the High Court, because of the news flashed in the media on 29.08.2014, about this Court having stayed further proceedings in the matter. The issue under consideration is not whether the Chief Justice of the

High Court was well meaning, in constituting the “two-Judge Committee” for inquiring into the matter. The issue is, whether it was open to the Chief Justice of the High Court, to constitute such a committee, within the framework of the “in-house procedure”. We are satisfied, that the Chief Justice of the High Court, had no jurisdiction to do so, in terms of the “in-house procedure”. It is therefore, that the learned counsel representing the High Court repeatedly adopted the stance, that in the given facts and circumstances of the case, the High Court would not be averse to following any procedure, which this Court would consider reasonable and proper. Learned Solicitor General representing the Secretary General of the Supreme Court, fully endorsed the above view.

33. No pointed submission was advanced by the counsel representing respondent no.3 - Justice ‘A’, on the main submission advanced at the hands of the learned counsel for the petitioner. Learned counsel for respondent no.3, in order to repudiate the submissions advanced at the hands of the learned counsel for the petitioner, contended that the Chief Justice of a High Court, does not function under the administrative control of the Chief Justice of India. It was, therefore pointed out, that while

adjudicating on the issue being canvassed, it needed to be kept in mind, that the Chief Justice of a High Court, is not subservient to the Chief Justice of India. It was accordingly asserted, that in discharging his onerous responsibility, the Chief Justice of a High Court, would (and should) be at liberty, to evolve a procedure, in the best interest of all concerned. It was submitted, that the Chief Justice of a High Court, should not be deprived of the said liberty, for the simple reason, that he has to ensure fairness to the rival parties, and at the same time, to safeguard the dignity of the institution. It was therefore, that learned counsel advised us, not to limit or place fetters on the discretion of the Chief Justice of the High Court, insofar as the investigative procedure is concerned. Learned counsel submitted, that the procedure adopted by the Chief Justice of the High Court, represented the ethical and moral authority of the High Court, and as such, it would not be proper to interfere with the same. It was submitted, that the petitioner had not alleged, that the procedure adopted by the Chief Justice of the High Court, was unethical or morally improper. It was repeatedly pointed out, that the proceedings assailed by the petitioner, had neither any statutory status, nor the force of law. It was submitted that the Chief Justice of the

High Court had followed the procedure, he felt best for the purpose. The submissions of the learned counsel representing respondent no.3, we are sure, was well intentioned. The response of the learned counsel avoids the issue being canvassed. The response would be understandable if the Chief Justice of the High Court had adopted the procedure in question, because the “in-house procedure”, would not have been the proper course to follow, or would have resulted in injustice to one or the either party. But that is not the case here.

34. We have given our thoughtful consideration to the main contention advanced at the hands of the learned counsel for the petitioner. In the process of examining the “in-house procedure”, we have had the occasion to appreciate the invaluable contribution made by three Judges of this Court, two of whom adorned this Court as Chief Justices, and two Chief Justices of High Courts, one of whom was later elevated as a Judge of this Court. The “in-house procedure”, did not overlook any relevant aspect. The sensitivity of the matter was kept in mind. The individual integrity of the parties was taken care of. The parties concerned were assured, that all efforts would be made to unravel the truth. The procedure devised ensured the preservation of institutional

reputation, as well. In dealing with complaints made against sitting judges of High Courts, the onus of recording a *prima facie* view, was vested with the Chief Justice of the concerned High Court. Participation in the investigative process, at the hands of any other judge of the same High Court, was sought to be excluded. The exclusion of judges of the same Court from the investigative process, was also well thought out. In certain situations it may be true, as pointed out by the learned counsel for the petitioner, that judges of the same Court being colleagues of the concerned judge, would endeavour to exculpate him from his predicament. It is not as if, the position could not be otherwise. Animosity amongst colleagues is not unknown. Reasons of competitiveness, jealousy and the like are known amongst colleague judges, specially from the same High Court. By excluding judges of the concerned High Court (as the judge complained against), is bound to be beneficial, in both the situations, referred to above. The Chief Justice of the High Court, being a Judge from another State, would be shorn of any such prejudices. Moreover, being a man on the spot, he would be most suited for the purpose.

35. A perusal of the “in-house procedure” applicable to sitting judges of High Courts reveals, that the same is compartmentalized into two stages. Through the first stage, the *prima facie* veracity of the allegations, contained in the complaint is ascertained. If so, whether a deeper probe is called for. The first stage does not contemplate an in-depth examination of the allegations. It requires merely an assessment based on the contents of the complaint, and the response of the concerned judge. All that the Chief Justice of the High Court is required to do, is to determine whether a deeper probe is required. This is to be done, on the basis of a logical assessment made on a consideration of the response of the concerned Judge (with reference to the allegations levelled in the complaint).

36. It is the second stage of the “in-house procedure”, relating to sitting judges of High Courts, which could lead to serious consequences. The second stage is monitored by none other, than the Chief Justice of India. Only if the Chief Justice of India endorses the view expressed by the Chief Justice of the High Court, that a deeper probe is called for, he would constitute a “three-member Committee”, and thereby take the investigative process, to the second stage. This Committee is to comprise of

two Chief Justices of High Courts (other than the concerned High Court), besides a Judge of a High Court. The second stage, postulates a deeper probe. Even though the “three-member Committee” is at liberty to devise its own procedure, the inherent requirement provided for is, that the procedure evolved should be in consonance with the rules of natural justice. Herein, for the first time, the authenticity of the allegations, are to be probed, on the basis of an inquiry. The incumbents of the “three-member Committee”, would have no nexus, with the concerned judge. Not only would the concerned judge have a fair opportunity to repudiate the allegations levelled against him, even the complainant would have the satisfaction, that the investigation would not be unfair. The “in-house procedure” was devised to ensure exclusion of favouritism, prejudice or bias.

37. By forwarding the complaint received by the Chief Justice of India against respondent no.3 - Justice ‘A’, to the Chief Justice of the High Court, the “in-house procedure” was sought to be put in motion. The extract of the “in-house procedure” (applicable to sitting Judges of High Court), reproduced in paragraph 22 above reveals, that the same is expressed in the simplest possible words. For recording our conclusions, we have endeavoured to

explain the same through “seven steps” contemplated therein. The description of the “in-house procedure”, relating to sitting High Court Judges, is being narrated hereunder, stepwise:

Step one: (i) A complaint may be received, against a sitting Judge of a High Court, by the Chief Justice of that High Court;

(ii) A complaint may also be received, against a sitting Judge of a High Court, by the Chief Justice of India;

(iii) A complaint may even be received against a sitting Judge of a High Court, by the President of India. Such a complaint is then forwarded to the Chief Justice of India;

In case of (i) above, the Chief Justice of the High Court shall examine the contents of the complaint, at his own, and if the same are found to be frivolous, he shall file the same.

In case of (ii) and (iii) above, the Chief Justice of India shall similarly examine the contents of the complaint, by himself, and if the same are found to be frivolous, he shall file the same.

Step two: (i) The Chief Justice of the High Court, after having examined a complaint, may entertain a feeling, that the complaint contains serious allegations, involving misconduct or impropriety, which require a further probe;

(ii) The Chief Justice of India, on examining the contents of a complaint, may likewise entertain a feeling, that the complaint contains serious allegations, involving misconduct or impropriety, which require a further probe;

In case of (i) above, the Chief Justice of the High Court, shall seek a response from the concerned Judge, and nothing more.

In case of (ii) above, the Chief Justice of India, shall forward the complaint to the Chief Justice of the High Court. The Chief Justice of the High Court, shall then seek a response from the concerned Judge, and nothing more.

Step three: The Chief Justice of the High Court, shall consider the veracity of the allegations contained in the complaint, by taking into consideration the response of the concerned Judge. The above consideration will lead the Chief Justice of the High Court, to either of the below mentioned inferences:

- (i) The Chief Justice of the High Court, may arrive at the inference, that the allegations are frivolous. In the instant eventuality, the Chief Justice of the High Court shall forward his opinion to the Chief Justice of India.
- (ii) Or alternatively, the Chief Justice of the High Court, may arrive at the opinion, that the complaint requires a deeper

probe. In the instant eventuality, the Chief Justice of the High Court, shall forward the complaint, along with the response of the Judge concerned, as also his own consideration, to the Chief Justice of India.

Step four: The Chief Justice of India shall then examine, the allegations contained in the complaint, the response of the concerned Judge, along with the consideration of the Chief Justice of the High Court. If on such examination, the Chief Justice of India, concurs with the opinion of the Chief Justice of the High Court (that a deeper probe is required, into the allegations contained in the complaint), the Chief Justice of India, shall constitute a “three-member Committee”, comprising of two Chief Justices of High Courts (other than the High Court, to which the Judge belongs), and one High Court Judge, to hold an inquiry, into the allegations contained in the complaint.

Step five: The “three-member Committee” constituted by the Chief Justice of India, shall conduct an inquiry, by devising its own procedure, consistent with the rules of natural justice. On the culmination of the inquiry, conducted by the “three-member Committee”, it shall record its conclusions. The report of the “three-member Committee”, will be furnished, to the Chief Justice

of India. The report could lead to one of the following conclusions:

That, there is no substance in the allegations levelled against the concerned Judge; or that there is sufficient substance in the allegations levelled against the concerned Judge. In such eventuality, the “three-member Committee”, must further opine, whether the misconduct levelled against the concerned Judge is so serious, that it requires initiation of proceedings for removal of the concerned Judge; or that, the allegations contained in the complaint are not serious enough to require initiation of proceedings for the removal of the concerned Judge.

In case of (i) above, the Chief Justice of India, shall file the complaint.

In case of (ii) above, the report of the “three-member Committee”, shall also be furnished (by the Committee) to the concerned Judge.

Step six: If the “three-member Committee” constituted by the Chief Justice of India, arrives at the conclusion, that the misconduct is not serious enough, for initiation of proceedings for the removal of the concerned Judge, the Chief Justice of India shall advise the concerned Judge, and may also direct, that the

report of the “three-member Committee” be placed on record. If the “three-member Committee” has concluded, that there is substance in the allegations, for initiation of proceedings, for the removal of the concerned Judge, the Chief Justice of India shall proceed as under:-

- (i) The concerned judge will be advised, by the Chief Justice of India, to resign or to seek voluntary retirement.
- (ii) In case the concerned Judge does not accept the advice of the Chief Justice of India, the Chief Justice of India, would require the Chief Justice of the concerned High Court, not to allocate any judicial work, to the concerned Judge.

Step seven: In the eventuality of the concerned Judge, not abiding by the advice of the Chief Justice of India, the Chief Justice of India, as indicated in step six above, the Chief Justice of India, shall intimate the President of India, and the Prime Minister of India, of the findings of the “three-member Committee”, warranting initiation of proceedings, for removal of the concerned judge.

38. It is apparent from the “seven steps”, of the “in-house procedure”, for sitting High Court Judges, that the role of the Chief Justice of the High Court, is limited to the first three steps. We

are satisfied, that the main contention advanced by the learned counsel for the petitioner, relying on the “in-house procedure” is fully justified. There can be no doubt, that it was not open to the Chief Justice of the High Court, either to constitute the “two-Judge Committee”, or to require the “two-Judge Committee”, to hold an inquiry into the matter, by recording statements of witnesses. The role of the Chief Justice of the High Court, being limited to the first stage of the investigative process, during which the only determination is, whether a *prima facie* case is made out requiring a deeper probe; the Chief Justice of the High Court had exceeded the authority vested in him under the “in-house procedure”. It is only in the second stage of the investigative process, that the Chief Justice of India, is to constitute a “three-member Committee” for holding a deeper probe, into the allegations levelled in the complaint. Learned counsel for the petitioner, was fully justified, in submitting, that the “two-Judge Committee” constituted by the Chief Justice of the High Court, was beyond the purview of the “in-house procedure”.

39. Having examined the facts and circumstances of the case, we are of the view, that by not strictly abiding by the procedure contemplated under the “in-house procedure” evolved by this

Court, the Chief Justice of the High Court, introduced serious infirmities in the investigative process. These infirmities were of the nature which were sought to be consciously avoided under the “in-house procedure”. We may mention a few. It is apparent, that the “in-house procedure” contemplated an independent holistic two-stage process. We have described hereinabove, that the first stage comprises of steps ‘one’ to ‘three’. The first stage is limited to a *prima facie* consideration, at the hands of the Chief Justice of the High Court, for determining whether a deeper probe into the matter was required. The first stage of the “in-house procedure” contemplates the implied exclusion of colleague Judges, from the same High Court. In the process adopted by the Chief Justice of the High Court, he has consciously involved colleague Judges, of the same High Court. This was sought to be avoided under the “in-house procedure”. Unfortunately, what Chief Justice of the High Court has embarked upon, is not a *prima facie* determination, but a holistic consideration of the allegations. This is also wholly contrary to the “in-house procedure”. The Chief Justice of the High Court, has actually embarked upon steps ‘four’ to ‘seven’, which are a part of the second stage of the “in-house procedure”. The second stage of the “in-house procedure”

envisages a deeper probe, which is to be monitored by the Chief Justice of India himself. If the proceedings move to the second stage, the Chief Justice of India, would nominate a “three-member Committee”. In the process adopted by the Chief Justice of the High Court, he has usurped the investigative process, assigned to the “three-member Committee”. The Chief Justice of the High Court, has himself, commenced the deeper probe, through the “two-Judge Committee”. Furthermore, under the second stage, the inquiry is to be conducted by two sitting Chief Justices of High Courts, and one Judge of a High Court. An inquiry conducted by the “three-member Committee”, in terms of the “in-house procedure”, would have a wholly different impact. Not only would the concerned parties feel reassured, that justice would be done, even the public at large would be confident, that the outcome would be fair and without any prejudices. By doing so, the Chief Justice of the High Court, ignored the wisdom of the Committee of Judges, who devised the “in-house procedure”, as also, the determination of the Full Court of the Supreme Court of India. In the procedure adopted, by the Chief Justice of the High Court in the instant case, it is possible for one or the other party to feel, that he/she may not get justice at the hands of the “two-Judge

Committee". In fact, that is exactly the position, in the present case. For the reasons recorded hereinabove, the proceedings adopted by the Chief Justice of the High Court are liable to be set aside. The same are accordingly hereby set aside.

40. The next contention of the learned counsel for the petitioner was, that the inquiry conducted by the "two-Judge Committee", constituted by the Chief Justice of the High Court, cannot be expected to arrive at a fair conclusion. That by itself, according to learned counsel, vitiates the entire proceedings. The instant submission was sought to be supported on two counts. Firstly, it was the submission of the learned counsel for the petitioner, that all the persons and officers through whom the petitioner is to substantiate her allegations, are subordinate to respondent no.3 - Justice 'A'. It was pointed out, that Justice 'A' exercises administrative superintendence and control over them. It was also the submission of the learned counsel for the petitioner, that even persons who would vouchsafe the veracity of the assertions made by respondent no. 3 - Justice 'A', are under the administrative supervision and control of respondent no. 3, and as such, they too cannot be expected to make statements, freely and without fear. Secondly, it was the contention of the

learned counsel for the petitioner, that the “two-Judge Committee” constituted by the Chief Justice of the High Court, comprised of colleagues of respondent no.3 - Justice ‘A’, and as such, the said committee may not be open-minded enough, to affirm the claim of the petitioner. In this behalf, it was the submission of the learned counsel, that the endeavour of the “two-Judge Committee”, would be to exculpate their colleague, from the allegations levelled against him. Accordingly, it was the assertion of the learned counsel, that the “two-Judge Committee” required to inquire into the matter, by the Chief Justice of the High Court, was wholly unsuited for inquiring into the allegations levelled by the petitioner.

41. It is not necessary for us, to delve into the contention advanced at the hands of the learned counsel for the petitioner, as has been noticed in the foregoing paragraph, for the simple reason, that while accepting the main contention advanced at the hands of the learned counsel, we have already concluded, that the procedure adopted by the Chief Justice of the High Court, is liable to be set aside. Be that as it may, we consider it just and appropriate to deal with the above contention, so that the issue canvassed is crystallized, by an effective determination for future

reference. There can be no doubt, that an investigation, would lead to consequences. The concerned judge may be found remiss, or alternatively, he may be exculpated of the charges. Whilst in the former eventuality, the concerned judge against whom the findings are recorded, would be the obvious sufferer. In the latter eventuality, the adverse consequences would be against the complainant, for it would be assumed that she had levelled unfounded allegations. It is therefore imperative, that the procedure adopted for the investigative process, is absolutely fair for all concerned. The procedure should be such as would ensure, that it would be shorn of favouritism, prejudice or bias. Presence of any one of the above, would vitiate the entire investigative process. Recording of statements of individuals, who are subservient to respondent no.3 – Justice 'A', irrespective of whether the statements are recorded on behalf of the complainant or the concerned judge, would most definitely render the investigative process unsustainable in law. The influence of the concerned judge, over the witnesses to be produced, either by the complainant or by the concerned judge himself, will have to be removed. It will be for the complainant, to raise a grievance of the nature referred to above. In such an eventuality, the

grievance will be considered by the Chief Justice of India. And whenever necessary, remedial steps will be taken.

42. The last contention of the learned counsel for the petitioner was, that the Chief Justice of the High Court himself, is clearly incapacitated, to be a party to any determinative process, insofar as the allegations levelled by the petitioner are concerned. It was the contention of the learned counsel, that for the present case, the Chief Justice of the High Court, should not even be required to determine, whether or not a deeper probe into the matter was required. Insofar as the instant aspect of the matter is concerned, learned counsel vehemently contended, that the petitioner had made numerous efforts to meet the Chief Justice of the High Court, to apprise him of the factual position. It was pointed out, that in the petitioner's efforts to meet the Chief Justice of the High Court, she had also made repeated attempts to do so, through the Private Secretary of the Chief Justice. The Private Secretary has now assumed the stance, that the petitioner had never contacted him, for the said purpose. This position, according to the petitioner, is false not only to the knowledge of the Private Secretary, but also, to the knowledge of all concerned. It is sought to be emphasized, that a press note was also

released, to the aforesaid effect, at the behest of the Chief Justice of the High Court. The position adopted by the Chief Justice of the High Court, according to the learned counsel, clearly reveals a position of denial of the factual assertions made by the petitioner. In the above view of the matter, it was the contention of the learned counsel for the petitioner, that even the Chief Justice of the High Court, was in denial of the facts asserted by the petitioner. And by doing so, the Chief Justice of the High Court had rendered himself ineligible, for any role arising out of the complaint made by the petitioner.

43. It is essential for us to record a finding even on the last contention advanced at the hands of the learned counsel. We say so, because according to the learned counsel for the petitioner, it would not be proper, in the facts and circumstances of this case, to reinitiate the process expressed in the “in-house procedure”, through the Chief Justice of the High Court. It seems to us, that there is merit in the instant contention. Undoubtedly, the Chief Justice of the High Court has adopted a position, in respect of some aspects of the matter, contrary to the position asserted by the petitioner. Truthfully, even though these facts do not have any direct bearing on the allegations levelled against respondent

no. 3, yet when examined dispassionately, the fact of the matter is that the Chief Justice of the High Court, personally perceived certain facts differently. These facts are personal to the Chief Justice of the High Court, namely, whether attempts were made by the petitioner to meet the Chief Justice of the High Court, and whether he declined such attempts. In the above view of the matter, we are of the considered view, that it may not be appropriate, in the facts and circumstances of the present case, to associate the Chief Justice of the High Court with the investigative process. It is not as if, there is any lack of faith, in the Chief Justice of the High Court. It is also not as if, there is any doubt in our mind, about the righteousness of the Chief Justice of the High Court. The issue is that of propriety. To the credit of the Chief Justice of the High Court, we may also observe, that he may have adopted the present procedure, just for the reasons indicated above, namely, to keep himself out of the fact finding process, so as to arrive at a fair and just decision. But that is inconsequential. We are accordingly further satisfied in concluding, that following the “in-house procedure” strictly by associating the Chief Justice of the concerned High Court, would

not serve the contemplated purpose, insofar as the present controversy is concerned.

44. We have concluded hereinabove, that it is no longer viable, to strictly follow the “in-house procedure” contemplated for sitting judges of the High Court *de novo*. That however, does not mean, that it is no longer possible to determine the veracity of the allegations levelled by the petitioner. What procedure must be followed in the facts and circumstances of the present case, will have to be determined by the Chief Justice of India. We therefore, leave it to the Chief Justice of India, to take a fresh call on the matter. All that needs to be done is, that the role assigned to the Chief Justice of the concerned High Court, in the first stage of the “in-house procedure”, will now have to be assigned to some one other than the Chief Justice of the concerned High Court. In taking a decision on the matter, the Chief Justice of India may assign the above role to a Chief Justice, of some other High Court. Or alternatively, he may himself assume the said role. The assumption of the role by the Chief Justice of India himself, would not be unrealistic, as the said role is vested with the Chief Justice of India, under the “in-house procedure”, with

reference to complaints received against Chief Justices of High Courts.

45. In view of the consideration and the findings recorded hereinabove, we may record our general conclusions as under:

(i) The “in-house procedure” framed by this Court, consequent upon the decision rendered in C. Ravichandran Iyer’s case (supra) can be adopted, to examine allegations levelled against Judges of High Courts, Chief Justices of High Courts and Judges of the Supreme Court of India.

(ii) The investigative process under the “in-house procedure” takes into consideration the rights of the complainant, and that of the concerned judge, by adopting a fair procedure, to determine the veracity of allegations levelled against a sitting Judge. At the same time, it safeguards the integrity of the judicial institution.

(iii) Even though the said procedure, should ordinarily be followed in letter and spirit, the Chief Justice of India, would have the authority to mould the same, in the facts and circumstances of a given case, to ensure that the investigative process affords safeguards, against favouritism, prejudice or bias.

(iv) In view of the importance of the “in-house procedure”, it is essential to bring it into public domain. The Registry of the Supreme Court of India, is accordingly directed, to place the same on the official website of the Supreme Court of India.

46. In the facts and circumstances of the present case, our conclusions are as under:

(i) With reference to the “in-house procedure” pertaining to a judge of a High Court, the limited authority of the Chief Justice of the concerned High Court, is to determine whether or not a deeper probe is required. The said determination is a part of stage-one (comprising of the first three steps) of the “in-house procedure” (elucidated in paragraph 37, hereinabove). The Chief Justice of the High Court, in the present case, traveled beyond the determinative authority vested in him, under stage-one of the “in-house procedure”.

(ii) The Chief Justice of the High Court, by constituting a “two-Judge Committee”, commenced an in-depth probe, into the allegations levelled by the petitioner. The procedure adopted by the Chief Justice of the High Court, forms a part of the second stage (contemplated under steps four to seven –elucidated in paragraph 37, hereinabove). The second stage of the “in-house

procedure” is to be carried out, under the authority of the Chief Justice of India. The Chief Justice of the High Court by constituting a “two-Judge Committee” clearly traversed beyond his jurisdictional authority, under the “in-house procedure”.

(iii) In order to ensure, that the investigative process is fair and just, it is imperative to divest the concerned judge (against whom allegations have been levelled), of his administrative and supervisory authority and control over witnesses, to be produced either on behalf of the complainant, or on behalf of the concerned judge himself. The Chief Justice of the High Court is accordingly directed to divest respondent no.3 - Justice ‘A’, of the administrative and supervisory control vested in him, to the extent expressed above.

(iv) The Chief Justice of the High Court, having assumed a firm position, in respect of certain facts contained in the complaint filed by the petitioner, ought not to be associated with the “in-house procedure” in the present case. In the above view of the matter, the Chief Justice of India may reinstitute the investigative process, under the “in-house procedure”, by vesting the authority required to be discharged by the Chief Justice of the concerned High Court, to a Chief Justice of some other High Court, or

alternatively, the Chief Justice of India may himself assume the said role.

47. Liberty was sought by the learned counsel for the petitioner, to raise all remaining issues raised in the writ petition, through a separate petition. Leave and liberty sought, is granted. The instant petition is disposed of, in the above terms.

Khehar)

New Delhi;
December 18, 2014.



.....J.
(Jagdish Singh

.....J.
(Arun Mishra)

JUDGMENT