

In Re: A.i. Jaleel

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Court : Kerala

Decided On : Oct-03-1972

Reported in : AIR1973Ker34

Judge : P. Narayana Pillai,; E.K. Moidu and; V. Khalid, JJ.

Acts : [Constitution of India](#) - Article 217(3); [Code of Criminal Procedure \(CrPC\)](#) ,
[1898](#) - Sections 204 and 561A

Appeal No. : R.C. No. 6 of 1972

Appellant : In Re: A.i. Jaleel

Advocate for Pet/Ap. : F.S. Nariman, Addl. Solicitor General on Notice; Manuel T. Paikadey, Adv.

Judgement :

Narayana Pillai, J.

1. In this revision taken up suo motu in reard to C. C. No. 229 of 1972 on the file of the District Magistrate. Ernakulam a question of law as to the interpretation of the Constitution arises.

2. The case was started on a complaint filed by Sri. A. I. Jaleel. Ex-M. L. A., against the Honourable the Chief Justice of this Court. It was alleged that in the declaration given by the Chief Justice at the time of his appointment as a Judge of

this Court he stated that his date of birth was June 5, 1915 when, as a matter of fact, it was May 21, 1911, that thereby he attempted to cheat the Government of money and that therefore he was guilty of the offences punishable under Section 199 of the Indian Penal Code and Section 420 read with Section 511 of the I. P. C. The District Magistrate took cognizance of the offences and ordered summons to be issued to the Chief Justice.

3. The Question as to whether the Chief Justice has given a false declaration of his age and attempted to cheat the Government can be answered one way or the other only after deciding his correct age. In other words, a decision about his correct age is involved in the decision regarding the alleged guilt. That under Article 217(3) of the Constitution which reads thus:

'If any question arises as to the age of a Judge of a High Court the question shall be decided by the President after consultation with the Chief Justice of India and the decision of the President shall be final.' can be taken only by the President.

4. This provision was added by the 15th amendment in 1963. The reasons for making such a provision are obvious. It would be derogatory to the dignity and prestige of a Judge and indeed to the entire judiciary if the age of a High Court Judge is allowed to be decided in Court, even if it be the highest court of the land. In a democratic set up Judicial tenure is basically different from service under the executive Government. In his book on 'Justice and Administrative Law' by William A. Robson, third edition, it is stated at pages 43 and 44:

'The judiciary is, in effect part of the public service of the Crown. But a judge is not 'employed' in the sense that a civil servant is employed, he fills a public office, which is by no means the same thing: and part of his independence consists in the fact that no one can give him orders as to the manner in which he is to perform his work. Like the more fortunate Practitioners in some professions, 'he owns no man master.' The only subordination which he knows in his official capacity is that which he owes to the existing body of legal doctrine enunciated by his brethren. Past and present, on the bench, and the legislative enactments of the King in Parliament.' Under the Constitution a High Court Judge can be removed from office only by an order of the President passed after address by each House of

Parliament supported by a majority of not less than two-thirds of the members of that House present and voting for such a removal and that only for proved misbehaviour or incapacity. His salary is made a charge on the Consolidated Fund of the State. Thus security of tenure of a Judge is safeguarded in the Constitution.

5. The express conferment of power under Article 217(3). only on the President implies that no one else, however high-placed he may be, has power to decide the age of a High Court Judge and that it is taken away from the State of courts also. Three decisions of the Supreme Court relevant in this connection may now be referred to. In *Jvoti Prakash v. Chief Justice, Calcutta High Court*. AIR 1965 SC 961 it was held that the President had exclusive jurisdiction to decide the age of a High Court Judge, that the President himself could decide the question of age only if there was a genuine dispute regarding it and that before taking a decision he ought to give the concerned Judge a reasonable opportunity to give his version in support of the age stated by him at the time of his appointment and produce his evidence in that behalf. The President himself can decide the question only after consulting the Chief Justice of India. In *Union of India v. Jvoti Prakash*. AIR 1971 SC 1093 the Court went a step further and held that the function of the President under Article 217(3) was a judicial function, that he could not when so functioning act on the advice of his Ministers and that there should be no interposition of any authority in the consultation between him and the Chief Justice of India and recommended that even in the matter of serving notice and asking for representation from the concerned Judge the President's Secretariat should be the sole channel. In interpreting the analogous provision in Article 192(1) which deals with decision by Governor on questions as to disqualifications of members of the State Legislature and which reads thus:

'If any Question arises as to whether a member of a House of the Legislature of a State has become subject to any of the disqualifications mentioned in Clause (1) of Article 191, the question shall be referred for the decision of the Governor and his decision shall be final.' It was held in *Brundaban Nayak v. Election Commission of India*. (1965) 3 SCR 53 = (AIR 1965 SC 1892), that if a question regarding the disqualification of a member of the Legislature was raised. Article 192(1) was immediately attracted and that it was immaterial how the question arose or by

whom it was raised or in what circumstances It was raised. It is clear that as the President alone has got 'the jurisdiction to decide the question as to the age of a High Court Judge, a decision on that matter by any other person would be unconstitutional.

6. It is true that under Article 217(3) decision of the President is only of the age of the Judge and not his date of birth. But that does not make any difference because age is determined on the basis of the date of birth and determination of the date of birth is involved In the determination of age.

7. There is nothing in Article 217(3) to show that the decision of the President is for purpose of superannuation only. That clause does not permit of any such limitation and in the absence of any restriction in Article 217(3) it has to be held that the decision of the President under Article 217(3) is for all purposes. After all the aim of every enquiry is to find out the truth and in respect of a simple fact like the question of date of birth of a person there can be only one truth and not two conflicting truths one good for one purpose and another for a different purpose. Truth is truth for all purposes. The decision of the President under the constitutional power regarding the age of a High Court Judge is a decision for all purposes whenever and wherever a question regarding his age arises for consideration and that decision shall reign supreme.

8. What is attempted to be done here is to raise for indirect decision what is directly forbidden by the Constitution. If the District Magistrate has no jurisdiction and so cannot decide the age of a High Court Judge he cannot also decide the question of guilt complained of in this case by Sri. A. I. Jaleel. While no legitimate complaint should be stifled by Magistrate, if a Magistrate Issues process to accused when there are no real grounds justifying the issue of process to him it would be unfair to the accused and would amount even to harassment of the accused.

9. In the circumstances of this case issue of process to the Chief Justice is sheer abuse of the process of the Court. The proceedings in C. C. No. 229 of 1972 on the file of the District Magistrate, Ernakulam are, hence, quashed.

10. It is only fitting at the end of this judgment to pay a tribute to Shri. F. S. Nariman. Additional Solicitor General who appeared on behalf of the Attorney General and to Shri. Manuel T. Paikaday. Advocate who appeared on behalf of the complainant for the excellent, brief and attractive arguments they presented on this intricate question and in particular to the former for his clear exposition of the Impact of Article 217(3) of the Constitution on the complaint filed against the Chief Justice.

Moidu, J.

11. I agree.

Khalid, J.

12. I also agree.

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