IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.

MONDAY, THE 14TH DAY OF MARCH 2022/23RD PHALGUNA, 1943

W.A.NO.1639 OF 2021
AGAINST THE JUDGMENT DATED 1.11.2021 IN WP(C).NO.17654/2021 OF HIGH COURT OF KERALA

APPELLANT/PETITIONER:

MATHEW Z PULIKUNNEL
AGED 70 YEARS,
26 STRATHCONA DRIVE, BELLEVILLE, ONTARIO, K8N4H9, CANADA,
REPRESENTED BY THE POWER OF ATTORNEY HOLDER MR.THARUN THOMAS, AGED 26 YEARS, S/O. MR.P.J.THOMAS, CHALASSERY, PULIKKUTTISSERY P.O, KOTTAYAM.

BY ADV.SRI.YESHWANTH SHENOY

RESPONDENTS/RESPONDENTS:

1. **CHIEF JUSTICE OF INDIA**
   SUPREME COURT OF INDIA, REPRESENTED BY THE SECRETARY GENERAL, SUPREME COURT OF INDIA, TILAK MARG,
   NEW - DELHI - 110001.

2. **CHIEF JUSTICE**
   HIGH COURT OF KERALA, ERNAKULAM,
   REPRESENTED BY THE REGISTRAR GENERAL, HIGH COURT OF KERALA, ERNAKULAM - 682031.

3. **UNION OF INDIA**
   THROUGH THE SECRETARY, MINISTRY OF LAW AND JUSTICE,
   4TH FLOOR, A - WING, SHASTRI BHAWAN, NEW DELHI - 110001.

4. **JUSTICE (RETD), ANTONY DOMINIC**
   KARIKKATTUKUNNEL HOUSE, PAPPALI ROAD,
   VAZHAKKALA, KOCHI – 682030.

5 JUSTICE SHAJI P.CHALY,
HIGH COURT OF KERALA, ERNAKULAM - 682031.

BY ADV.SRI.S.MANU

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 07.03.2022, ALONG WITH W.A.NO.1640/2021, THE COURT ON 14.03.2022 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.

MONDAY, THE 14TH DAY OF MARCH 2022/23RD PHALGUNA, 1943

W.A.NO.1640 OF 2021
AGAINST THE JUDGMENT DATED 1.11.2021 IN W.P(C).NO.17657/2021 OF HIGH COURT OF KERALA

APPELLANT/PETITIONER:

MATHEW Z PULIKUNNEL,
AGED 70 YEARS,
26 STRATHCONA DRIVE, BELLEVILLE, ONTARIO, K8N4H9, CANADA,
REPRESENTED BY THE POWER OF ATTORNEY HOLDER MR.THARUN THOMAS,
AGED 26 YEARS, S/O.MR.P.J.THOMAS, CHALASSERY, PULIKKUTTISSERY P.O,
KOTTAYAM.

BY ADV.SRI.YESHWANTH SHENOY

RESPONDENTS/RESPONDENTS:

1 CHIEF JUSTICE, HIGH COURT OF KERALA,
ERNAKULAM, REPRESENTED BY THE REGISTRAR GENERAL,
HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031.

2 UNION OF INDIA,
THROUGH THE SECRETARY, MINISTRY OF LAW AND JUSTICE, 4TH FLOOR,
A - WING, SHASTRI BHAWAN, NEW DELHI - 110001.

3 JUSTICE (RETD), ASHOK MENON,
FORMER JUDGE, HIGH COURT OF KERALA, ERNAKULAM - 682031.
CURRENTLY RESIDING AT SHANKARA VILAS, KINATTINKARA (H),
PATTIPARAMBU P.O., THIRUVILWAMALA, THRISSUR.

BY ADV.SRI.S.MANU

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 07.03.2022 ALONG WITH W.A.NO.1639/2021, THE COURT ON 14.03.2022 DELIVERED THE FOLLOWING:

J U D G M E N T

A.K.Jayasankaran Nambiar, J.

These writ appeals impugn a common judgment dated 01.11.2021 of a learned single judge that disposed two writ petitions viz. W.P(C).Nos.17654 & 17657 of 2021.

2. The writ petitions were disposed on a limited point as regards maintainability of a writ petition that sought the initiation of proceedings, in accordance with the in-house procedure adopted by the Full Court of the Supreme Court to deal with judicial misconduct of Judges of the High Court and Supreme Court, against the judges of this Court arrayed as respondents in the writ petitions. The learned single judge found that a person complaining of misconduct of a judge who heard and decided a *lis* in which he was a party, is not entitled to set in motion proceedings under Article 226 of the Constitution of India on an allegation that the Chief Justice of India or the Chief Justice of the High Court, as the case may be, has not provided a response to the complaint or that the receipt of the complaint has not been acknowledged.

3. As the appeals before us challenge the correctness of the said view of the learned single judge, and there is an eloquent narration of the facts that led to the filing of the writ petitions in the judgment of the learned single judge, we do not see the need to reproduce the said facts in our judgment. We choose rather to focus our attention to the arguments of the learned counsel for the appellant on the issue of maintainability of the writ petitions.

4. The submissions of Sri. Yeshwanth Shenoy, the learned counsel for the appellant, as summarised by him in the argument notes submitted before us after the hearing of the appeals, are as follows:

NOTES OF ARGUMENTS

1. Whether the 'in-house procedure' adopted by the full Court of the Hon'ble Supreme Court is 'procedural code' to deal with Judicial Misconduct of Judges of the High Court and Supreme Court or is it a mere extension of moral or ethical act ?

The Learned Single Judge relying on Indira Jaising held that inhouse procedure is a mere extension of moral or ethical Act and the Chief Justice of India or of a High Court does not have any powers over the other Judges of the Court and therefore no Writ

would lie to enforce the 'in-house procedure' adopted by the Full Court of the Hon'ble Supreme Court.

The Learned Single Judge did not rely on the *Asst. Dist & Sessions Judge* when it specifically provided the right to an aggrieved person to approach a Writ Court to enforce the procedure envisaged under the In-House Procedure.

However, the in-house Procedure adopted by the Full Court of the Supreme Court is not a 'law' as the same is not the creation of the Legislature or the Executive and neither does it qualify as a law declared under Article 141.

Therefore, this Court has to either declare the 'in-house procedure' to be unconstitutional or ensure that the same can be enforced by an aggrieved party in terms of *Asst. Dist & Sessions Judge. Indira Jaising* is not a case that could be relied upon in this matter as it was a case of a 3rd Party seeking the report of the findings whereas in this case, the aggrieved party has approached this Hon'ble Court to enforce the procedure under the in-house procedure.

2. What is the core and the essence of 'Independence of the Judiciary' ?

In *S.P. Gupta v. Union of India* 1981 (Supp) SCC 87 *"Judges should be of stern stuff and tough fibre, unbending before power, economic or political, and they must uphold the core principle of the rule of law which says, "Be you ever so high, the law is above you." This is the principle of independence of the Judiciary which is vital for the establishment of real participatory democracy, maintenance of the rule of law as a dynamic concept and delivery*

of social justice to the vulnerable sections of the community. It is this principle of independence of the judiciary which we must keep in mind while interpreting the relevant provisions of the Constitution.

Independence of Judiciary therefore indicates the Institution and not the individual Judges. Any person, who does not respect the Rule of Law, whatever be his/her position is not spared.

In *Mohd Aslam v. Union of India* [(1994) 6 SCC 442] the Hon'ble Supreme Court observed that when we speak of the rule of law as a characteristic of our country, no man is above the law but that here every man, whatever be his rank or condition, is subject to the ordinary law of the realm and amenable to jurisdiction of the ordinary tribunals. Respect for law and its institutions is the only assurance that can hold a pluralist nation together. One should ensure respect for law as its breach will demolish public faith in accepted constitutional institutions and weaken the peoples' confidence in the rule of law. It will destroy respect for the rule of law and the authority of Courts and will thus seek to place individual authority and strength of principles above the wisdom of law.

Case Laws Relied on:

a) *Addl. District & Sessions Judge 'X' v. High Court of M.P.,* (2015) 4 SCC 91

b) *C. Ravichandran Iyer v. Justice A.M. Bhattacharjee,* (1995) 5 SCC 457

c) *Indira Jaising v. Registrar General, Supreme Court of India and Another*, (2003) 5 SCC 494

d) *R.R. Parekh v. High Court of Gujarat & Another. (2016) 14 SCC 1*

5. We have considered the facts and circumstances of the case as borne out by the pleadings before us, and also perused the case law relied upon by the learned counsel for the appellants. The only issue that arises for consideration in these appeals is whether a disgruntled litigant, who believes that a judgment adverse to his interests, in a litigation in which he was a party, was occasioned on account of the misconduct of the presiding judge(s) can seek a writ of mandamus to compel the Chief Justice of the court to invoke the in-house procedure adopted by the Full Court of the Supreme Court to deal with judicial misconduct of Judges of the High Court and Supreme Court, against the judge(s) concerned ? While answering the said question, we have to bear in mind that, under our Constitution, judges of the High Court and the Supreme Court can be removed from their office only on the ground of proved misbehaviour or incapacity and by following the procedure enumerated in Articles 124 or 217, as the case may be, read with the provisions of the Judges (Inquiry) Act, 1968. No other disciplinary inquiry or proceedings is envisaged either under the Constitution or under any other statute in force in India. Had there been any such constitutional/statutory provision, then perhaps it may have been

open to a litigant alleging misconduct of a judge, to approach the superior courts with a prayer for enforcing the said statutory provisions which would, undoubtedly, have qualified as 'law' for the purposes of our constitution. While the word 'law' is defined widely, and in inclusive terms, under Article 13 of our Constitution, it must nevertheless refer to something that has the force of law in the territory of India. The in-house procedure adopted by the Full Court of the Supreme Court does not fit that description. As noticed by the Supreme Court in ***Indira Jaising v. Supreme Court of India and Another – [(2003) 5 SCC 494]***, the procedure was 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 complaint against the Chief Justices or Judges of the High Court in order to find out the truth of the imputation made in the complaint and that in-house inquiry is for the purpose of his own information and satisfaction." Such an inquiry, which is in the nature of a preliminary inquiry designed to provide information to the Chief Justice concerned, cannot be seen as a 'law', for the enforcement of which a litigant can approach the superior courts by invoking its writ jurisdiction, which is a remedy provided under public law. The decision whether or not to initiate the in-house procedure against a judge is a matter that falls within the discretion of the Chief Justice, and the discretion not being one conferred under

a 'law', its exercise cannot be compelled citing public interest. In taking this view, we are fortified by the decision of the Supreme Court in ***Registrar General, High Court of Madras v. R. Gandhi & Ors. – [(2014) 11 SCC 547]*** where, while considering a writ of quo warranto that questioned the competence of persons recommended for elevation as High Court judges, the court opined that while the lack of eligibility of the candidates for appointment as judges or the lack of an effective consultation could be scrutinized in a writ petition, the suitability of the candidates, being a matter of opinion, was not susceptible to judicial review. We are of the view that the same line of reasoning will serve to insulate the decision of the Chief Justice in the instant case from a scrutiny through judicial review.

6. We might also add that we are not persuaded to accept the submission of the learned counsel for the appellant, placing reliance on the decision of the Supreme Court in ***Addl. District & Sessions Judge 'X' v. Registrar General, High Court of M.P and Others – [(2015) 4 SCC 91]*** that dealt with the issue of invocation of the in-house procedure to deal with an allegation of sexual harassment by a sitting High Court judge. The learned counsel relied heavily on paragraph 37 of the said judgment to contend 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. Paragraph 37 of the aforecited judgment reads as follows:

> "**37**. 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 Judge concerned 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 v. Registrar General, Supreme Court of India, (2003) 5 SCC 494* 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 authority concerned. 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 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."

It is clear from a contextual reading of the above that the court was dealing with the right of an individual who is called upon to subject himself/herself to the contemplated procedure. That the observations in paragraph 37 were intended to apply only to such persons and not to any other complainant is clear from the immediately preceding paragraph (para 36) where, after referring to the judgment of the court in ***Indira Jaising (Supra)***, the court observes as follows:

> "xxxxxxxxxxxxxxx xxxxxxxxxxxxxxxxx xxxxxxxxxxxxxxx
>
> 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."

7. We are of the view therefore that the appellant cannot draw any support from the decision in ***Addl. District & Sessions Judge 'X' (Supra)*** to contend that the decision of the Chief Justice in the

instant case was justiciable. We are of the definite view that the decision of the Chief Justice in the instant case, to not provide a response to the complaint or to acknowledge the receipt of the complaint, is not justiciable and hence the writ petitions in question could not be maintained before this court, as rightly found by the learned single judge.

In the result, we see no reason to interfere with the judgment of the learned single judge impugned in these appeals and hence, for the reasons stated in the said judgment, as supplemented by the reasons stated in this judgment, we dismiss these Writ Appeals. No costs.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd/-
MOHAMMED NIAS C.P.
JUDGE

prp/