2026 INSC 65

**REPORTABLE**

**IN THE SUPREME COURT OF INDIA**

**CIVIL ORIGINAL JURISDICTION**

**WRIT PETITION (CIVIL) NO. 1233 of 2025**

**X ... PETITIONER**

**VS.**

**O/O SPEAKER OF THE HOUSE OF PEOPLE & ORS. ... RESPONDENTS**

**J U D G M E N T**

**DIPANKAR DATTA, J.**

**INDEX**

## PREFACE

**1.** This writ petition tasks us to decide an important question relating to proper interpretation of Section 3 of the Judges (Inquiry) Act, 1968[1], which hitherto has never emerged. Petitioner, a High Court Judge, contends that the procedure prescribed for the constitution of a Committee under Section 3 of the Inquiry Act has not been followed, thereby infringing his Fundamental Rights.

## FACTS

**2.** Facts in brief, relevant for deciding this writ petition, are these.

### *The incident*

2.1 While serving as a Judge of the Delhi High Court, a fire occurred at the petitioner's residence on 14th March, 2025. During the course of dousing the fire, burnt currency notes were allegedly discovered at his house. Following this incident, allegations of misbehaviour were levelled against the petitioner. In accordance with the "In-House Procedure" adopted by the Supreme Court in its Full Court meeting of

[1] Inquiry Act

15th December, 1999, the Chief Justice of India[2] constituted a three-member committee on 22nd March, 2025 to examine the allegations. The three-member committee submitted its report to the CJI on 3rd May, 2025, recording that the allegations were substantiated and that they warranted initiation of proceedings for the petitioner's removal from office. In terms of the procedure, the CJI then forwarded the report to the Hon'ble President[3] and the Hon'ble Prime Minister of India.

***Precursor Litigation***

2.2 Aggrieved, the petitioner filed a writ petition[4] before this Court, challenging Paragraphs 5(b) and 7 of the In-House Procedure, the forwarding of the report of the three-member committee by the CJI, and the report itself. Four days after the said petition was filed, i.e., on 21st July, 2025, the Monsoon Session of the Parliament commenced. During this session, Members of both Houses, desirous of initiating proceedings for removal of the petitioner from office, gave two notices of motion in their respective Houses on the same day (21st July, 2025). In the following part of this judgment, we will discuss, *inter alia*, the process of removal of a Judge from office, the notices that are required to be given, and the consequences of such notices being given on the same day.

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[2] CJI
[3] President
[4] Writ Petition (Civil) No. 699 of 2025

2.3 It is, however, apposite to note that the petitioner's writ petition was dismissed on 7th August, 2025, by a two-Judge Bench of this Court of which one of us (Dipankar Datta];') was a member.

***Notices of motion seeking removal of the petitioner from office: incidents of 21st July, 2025***

2.4 Invoking the provisions of the Inquiry Act, a notice was given on 21st July, 2025, of a motion signed by more than 100 members in the Lok Sabha for presenting an address to the President praying for the petitioner's removal. The said notice was received by the Speaker of the Lok Sabha at 12:30 p.m., but was not admitted on the same day.

2.5 After a brief interval, between 4:07 p.m. and 4:19 p.m., a notice for the same purpose, signed by more than 50 members, was given in the Rajya Sabha. The Chairman of the Rajya Sabha addressed the House regarding the said notice. In his speech, among other matters, the Chairman noted that a similar notice may have been given in the Lok Sabha. Referring to the proviso to Section 3(2) of the Inquiry Act (which requires the constitution of a Committee by the Presiding Officers of both Houses of the Parliament when notices of motion for the removal of a Judge are given in both Houses on the same day), the Chairman directed that "the Secretary-General will take necessary steps in this direction".

2.6 Notably, the Chairman resigned from his office of the Vice-President of India later that day (21st July, 2025).

2.7 Pursuant to the direction of the then Chairman, the Secretariat of the Rajya Sabha requested information from its counterpart in the Lok Sabha as to whether such a notice had indeed been given, to which the response was in the affirmative. Following this, the notice given in the Rajya Sabha was sent to the Members' Salaries & Allowances Branch of the Rajya Sabha Secretariat for verification of the signatures of the notice givers. Out of the 62 notice givers, the signatures of three did not match their specimen signatures.

***Consideration of the Notice by the Secretary General and non-admission by Deputy Chairman***

2.8 On 11th August, 2025, the notice given in the Rajya Sabha was scrutinized by its Secretary-General, who observed various deficiencies therein and held it to be not "in order." The draft decision of the Secretary-General was then placed before the Deputy Chairman, discharging the functions of the Chairman in his absence, who concurred with the conclusion and accordingly recorded that the notice was "not admitted". This decision was communicated to the Secretary-General of the Lok Sabha on the same day.

***Admission of notice by the Speaker of the Lok Sabha and constitution of Committee***

2.9 On 12th August, 2025, having received the communication that the notice had not been admitted by the Deputy Chairman (performing the duties of the office of Chairman), the Speaker of the Lok Sabha proceeded to admit the notice given in the Lok Sabha on 21st July, 2025. The Speaker announced this admission in the House and, in

accordance with Section 3(2) of the Inquiry Act, constituted a three-member Committee[5].

2.10 The Committee subsequently served upon the petitioner the memo of charges. There is some dispute as to whether all the materials that are sought to be relied upon have been furnished or not. That, however, is not a matter for our consideration.

**PROCEDURE FOR REMOVAL OF A JUDGE**

**3.** For a clearer understanding of the arguments advanced referring to the Constitutional and the statutory provisions relatable to removal of a Judge from office, we consider it apposite to first outline the process for such removal.

**4.** Article 124 of the Constitution of India provides for "Establishment and constitution of Supreme Court". Clause (4)[6] thereof provides that a Judge of the Supreme Court can be removed from office by the order of the President. It further lays down two conditions for removal: first, that the Judge must be guilty of "proved misbehaviour or incapacity"; and second, that the resolution for removal must be passed in each House of Parliament "by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting". From this, it is clear that a

[5] Committee

[6] (4) A Judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two – thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity.

"resolution" is to be moved in each House of the Parliament and that misbehaviour or incapacity must be "proved". Article 124, however, does not specify the procedure for presenting such an address, who may move it, how it is to be moved, or for investigating allegations against a Judge. Clause (5)[7], however, empowers the Parliament to regulate these procedural aspects by law. In exercise of this power, the Parliament, in the nineteenth year of the Republic, enacted the Inquiry Act.

**5.** The procedure applicable for removal of a Judge of the Supreme Court is also applicable for removal of a High Court Judge, as adopted under sub-clause (b) of clause (1) of Article 217 of the Constitution.

**6.** On a reading of the relevant provisions, we find that the process of removal of a Judge is indeed a tedious one involving various stages. The process for removal of a Judge, as envisaged in the Constitution and the Inquiry Act, is discussed below for completeness of understanding.

<u>Stage I: Introduction of Motion & Admission by Speaker/Chairman</u>

6.1 Section 3(1) of the Inquiry Act provides that to initiate the process for removal of a Judge, a notice must be given of a motion for presenting an address to the President praying for removal of such Judge. The said notice may be given in any house of the

[7] (5) Parliament may by law regulate the procedure for the presentation of an address and for the investigation and proof of the misbehaviour or incapacity of a Judge under clause (4).

Parliament. In the Lok Sabha, the said notice must be signed by at least 100 of its members. A minimum of 50 signatories is required in the case of the Rajya Sabha. Once such a notice has been given, it is for the Speaker (if the motion is given in the Lok Sabha) or the Chairman (if the motion is given in the Rajya Sabha) to take a call on admission of the motion.

6.2 The Speaker or the Chairman may either admit or reject the motion after *"consulting such persons, if any, as he thinks fit and after considering such materials, if any, as may be available to him"* [see: Section 3(1) of the Inquiry Act]. If the motion is not admitted, it brings down the curtain; if accepted, then the Committee [referred to in Section 3(2) of the Inquiry Act] is to be formed for taking the process ahead. User of the modal verb "may" in Section 3(1) suggests that the Speaker or the Chairman, as the case may be, is vested with a discretion whether or not to admit the motion.

<u>Stage II: Formulation of a Committee of three members for making investigation</u>

6.3 Section 3(2) of the Inquiry Act provides that once a notice is admitted, the motion is to be kept pending, and the Speaker or the Chairman is required to constitute a Committee for the purpose of investigating the grounds on which the removal of a Judge is sought. The Committee shall consist of three members: one chosen from among the Chief Justice and other Judges of the Supreme

Court, who would preside over the meetings of the committee[8]; one chosen from among the Chief Justices of the High Courts; and one person who, in the opinion of the Speaker or, as the case may be, the Chairman, is a distinguished jurist.

6.4 The second proviso to Section 3(2) provides that if notices have been given in both Houses of the Parliament, *albeit* on different dates, the notice submitted later in point of time shall stand rejected. Consequently, in such a case, the Committee shall be constituted by the Speaker of the Lok Sabha or the Chairman of the Rajya Sabha, wherever notice is given prior in point of time.

6.5 The first proviso to Section 3(2) contemplates a situation in which notices are given in both Houses on the same day. In such a case, *"no Committee shall be constituted unless the motion has been admitted in both Houses; and where such motion has been admitted in both Houses, the Committee shall be constituted jointly by the Speaker and the Chairman"*. Thus, this situation calls for the formation of a Joint Committee. It is this provision that forms the fulcrum of the dispute in the present case, and we propose to address the same a little later.

Stage III: Formulation of Charges and Investigation

6.6 The Committee is required to frame definite charges against the Judge proceeded against; provide such Judge with a statement of

[8] Rule 3 of the Judges (Inquiry) Rules, 1969

the grounds on which such charges are based; afford him a reasonable opportunity of being heard; and, where the allegation relates to physical or mental incapacity, the Committee would have the power to constitute a Medical Board [see: Sections 3(3), (4), (5), (6), (7) & (8) of the Inquiry Act].

6.7 The Committee, being empowered to regulate its own procedure, is mandated to afford the Judge a reasonable opportunity to cross-examine witnesses, adduce evidence, and be heard in his defence [see: Section 4(1) of the Inquiry Act].

Stage IV: Report by the Committee and discussion in Parliament

6.8 After conclusion of the investigation, the Committee must submit a report to the Speaker or the Chairman or both stating its findings on each charge. If the committee finds the Judge not guilty, it is the end of the matter; however, if the finding is of guilt, the motion for removal is taken up for discussion in the Parliament. [see: Sections 4 (2) & (3) and 6 of the Inquiry Act].

Stage V: Discussion in the Parliament

6.9 Upon receiving a report that finds the Judge guilty of any misbehaviour or suffering from any incapacity, the motion—which has been kept pending—shall be taken up for consideration by the House(s) of Parliament in which it was pending, together with the report of the Committee. Both Houses, after discussion, shall either adopt or reject the motion in accordance with the numerical

requirements prescribed under Article 124(4) of the Constitution, namely, *"by a majority of the total membership of that House and by a majority of not less than two – thirds of the members of that House present and voting"*. When the motion is adopted by both Houses, the *"misbehaviour or incapacity of the Judge shall be deemed to have been proved"*.

Stage VI : Order of the President

6.10 As is required by Article 124(4), a Judge can be removed only *"by an order of the President"*. Thus, after a motion has been passed by both houses, it is the President's order which results in removal of a Judge from office.

**THE CONUNDRUM**

**7.** Proviso 1 to Section 3(2) of the Inquiry Act reads:

> *"Provided that where notices of a motion referred to in sub-section (1) are given on the same day in both Houses of Parliament, no Committee shall be constituted unless the motion has been admitted in both Houses and where such motion has been admitted in both Houses, the Committee shall be constituted jointly by the Speaker and the Chairman."*

**8.** Petitioner is aggrieved by the constitution of the Committee solely by the Speaker of the Lok Sabha. Since notices under Section 3(1) of the 1968 Act were given in both Houses on the same day, the petitioner has contended that the Committee constituted by the Speaker of the Lok Sabha violates the proviso. According to the petitioner, since notices were given in both Houses on the same day, a Joint Committee should have been formed by the Speaker of the Lok Sabha and the Chairman of the Rajya Sabha, subject to the motion having been

admitted in both the Houses; and if the motion fails in any House, the consequence, in his submission, is that the notice given in the other House must also fail. In essence, the petitioner's argument is that where notices are given in both Houses on the same day, and the motion is not admitted in one House, the Presiding Officer of the other House, i.e., the Speaker or the Chairman, as the case may be, ceases to have the authority to proceed with the motion.

**9.** On the other hand, the respondents have invited us to interpret the provision in a manner that facilitates the proceedings for investigation rather than bringing them to a grinding halt. According to their reading of the first proviso, the decisive factor is not the mere giving of notices of motion in both Houses on the same day, but their admission on the same day. It was contended that even if notices are given in both the Houses, where the motion is admitted in only one House, that House remains competent to proceed with the constitution of a Committee through its Presiding Officer, i.e., the Speaker or the Chairman, as the case may be, notwithstanding that the motion might have been rejected by the Presiding Officer of the other House. Drawing our attention to the documents, since placed on record, the respondents submitted that the motion was never admitted by the Chairman of the Rajya Sabha. Consequently, it has been their argument, that the Committee was validly constituted by the Speaker of the Lok Sabha.

## SUBMISSIONS

**10.** The written submissions filed by the parties have been made part of this judgment as appendices. We find reference to numerous precedents by the parties, which were not cited in course of hearing. For brevity's sake, the key arguments have been referred to by us in the judgment wherever necessary.

## ISSUES

**11.** Based on the arguments advanced during proceedings in Court and the written submissions filed by the parties, the following questions arise for our consideration:

I. How should the first proviso to Section 3(2) of the Inquiry Act be construed? Does it require the constitution of a Joint Committee where notices, having been given in both Houses on the same day, is later followed by refusal to admit the motion by the Presiding Officer of one House and admission of the motion by the Presiding Officer of the other House?

II. Whether, in view of the office of the Chairman of the Rajya Sabha falling vacant, the Deputy Chairman of the Rajya Sabha was competent to refuse admission of the notice of motion?

III. What is the effect, if any, of the Deputy Chairman's refusal to admit the motion on the validity of the Speaker's action under Section 3(2) of the Inquiry Act?

IV. Whether the draft decision prepared by the Secretary-General of the Rajya Sabha recording that the notice of motion given to the Chairman is not "in order" justified in law?

V. Whether the petitioner is entitled to any relief?

## ANALYSIS

### ISSUE I : HOW MUST THE FIRST PROVISO BE CONSTRUED?

**12.** Under the heading "Conundrum," we have examined the differing views presented before us on the proper construction of the first proviso. Section 3 of the Inquiry Act, *inter alia*, prescribes the procedure to be followed by the Parliament in considering a motion and in conducting an investigation into the allegations made against a Judge. The first proviso to Section 3(2) addresses the specific situation where notices of motion are given in both Houses but on the same day. There is no dispute that the object of the said proviso is to provide an additional safeguard to the Judge by requiring the constitution of a Joint Committee of the Speaker and the Chairman and to prevent a situation where the Judge is made to attend proceedings before two separate committees constituted by the Speaker and the Chairman. The question before us, however, is: when precisely is this safeguard triggered?

12.1. We are unable to accept the interpretation of the first proviso, as advanced by Mr. Rohatgi, learned senior counsel for the petitioner, namely, that where notices of motion have been given in both Houses on the same day, the rejection of a notice in one House would

automatically result in the notice in the other House failing for the following reasons.

12.2. The first proviso does not address all possible permutations but is confined to one specific situation, namely, where notices of motion given in both Houses on the same day have been admitted in both Houses. It is only in that limited situation that the statute mandates the constitution of a Joint Committee. The said proviso does not prescribe a condition precedent for the formation of a Committee in cases other than the one expressly provided.

12.3. In other words, the first proviso is not exhaustive but situational in nature. It does not contemplate a scenario where a notice of motion is accepted in one House and rejected in the other. To interpret the said proviso in the manner suggested by Mr. Rohatgi would require us to read into it a disabling consequence, namely, that the motion pending in the other House must also necessarily fail. Such an interpretation would amount to judicial legislation, a course we are neither empowered nor inclined to undertake.

12.4. It is a settled principle of statutory interpretation that a proviso cannot be read in a way which nullifies the provision to which it is a proviso[9], unless such an intention is manifest. The main part of Section 3(2)

[9] see: A.N. Sehgal v. Raje Ram Sheoran, 1992 SUPP (1) SCC 304; Tribhovandas Haribhai Tamboli v. Gujarat Revenue Tribunal, (1991) 3 SCC 442; Haryana State Cooperative Land Development Bank Ltd. v. Haryana State Cooperative Land Development Banks Employees Union & Anr., (2004) 1 SCC 574; and Kerala State Housing Board v. Ramapriya Hotels (P) Ltd., (1994) 5 SCC 672.

vests the power to constitute a Committee in the Speaker or the Chairman, as the case may be, upon admission of the notice of motion. The first proviso cannot be read to curtail this power except in one clearly defined circumstance, namely, the admission of notices in both Houses. In all other cases, the power of the Speaker or the Chairman to constitute a Committee remains unaffected.

12.5. There is nothing in the Inquiry Act to suggest that rejection of a motion in one House would render the other House incompetent to proceed in accordance with law. The argument, therefore, lacks any legal foundation. The interpretation advanced by the petitioner of rejection of a notice in one House resulting in the notice automatically failing in the other House would entail consequences of a most serious nature. The members would be put to square one and the process has to be initiated afresh in either House. Had the Parliament intended such far-reaching consequences, it would have articulated the first proviso in clear and unambiguous terms. The absence of any express provision to that effect is, in our opinion, determinative.

12.6. Looked from another angle, accepting such an argument would produce absurd results where the individual capacity of one House in initiating a motion under Article 124(4) becomes contingent upon the outcome in the other House, even at the stage of admission of such a motion. Taking away the autonomy of one of the two Houses of the Parliament could not have been the intent behind the first proviso.

12.7. Such an interpretation must also be rejected on the ground that it renders the first proviso open to abuse. It would permit a situation where, upon getting the wind of a notice of motion being given for removal of a Judge with a real likelihood of the same being admitted by the Presiding Officer of one House, certain members of the other House not inclined to have the process of removal initiated against the Judge may deliberately give a defective notice on the same day, solely with the intention of scuttling the proceedings. Upon such notice subsequently being found to be defective and not admitted, the mere fact that such a notice was introduced on the same day would lead to the first proviso being set in action mandating constitution of a Joint Committee, as argued by the petitioner, thereby leading to frustration of the proceedings in the first House. Furthermore, it is also possible that upon introduction of the notice of motion in the second House, the Speaker or the Chairman does not admit or reject the motion. Such an act, on a literal application of the first proviso, would be sufficient to trigger the requirement of Joint Committee. The proviso cannot be allowed to be used as a weapon for scuttling proceedings or giving a veto to the Houses of Parliament.

12.8. In our opinion, the mischief which the Inquiry Act sought to remedy was the absence of a statutory mechanism for investigating into allegations against a Judge and for facilitating such investigation. The Inquiry Act cannot be interpreted in a manner that frustrates this

objective by permitting the proviso to be employed as an instrument of obstruction.

12.9. It has been contended, with considerable emphasis, that the legislative intent underlying the proviso is to confer an additional layer of protection to a Judge, by ensuring that if either House is unwilling to admit the motion, the process of impeachment must necessarily fail. We are unable to agree with such contention. In our view, the protection afforded to a Judge remains fully intact as, even where a motion is admitted and a Committee is constituted, either House retains the absolute authority to reject the motion after the Committee's report is placed before it. Moreover, assuming *arguendo*, that the proviso was intended to provide such heightened protection, it cannot be interpreted in a manner that renders the mechanism of removal practically unworkable. Constitutional safeguards for Judges cannot come at the cost of paralysing the removal process itself. The first proviso must, therefore, be construed to balance prescribed protection with the effective functioning of the mechanism for removal of a Judge from office triggered by the peoples' representatives, and not to frustrate it altogether.

**13.** Also, as contended by Mr. Mehta, learned Solicitor General representing the respondents, the first proviso is intended to obviate the risk of parallel committees being constituted by the Presiding Officers of the both Houses of Parliament in a circumstance where the Presiding Officers of both Houses, unaware of a notice given in the

other, proceeds to admit the motions and constitutes two separate committees. Highly improbable though it seems to be (unawareness of the Presiding Officers), we cannot rule out the possibility. Such a situation would inevitably result in the formation of two committees, giving rise to a serious possibility of conflicting and inconsistent conclusions apart from requiring the Judge to face two investigations.

**14.** Finding ourselves in disagreement with the interpretation proposed by the petitioner, we hold that the first proviso caters to only one situation, that is, when notices of motion were given in both Houses on the same day and were admitted by both Houses (irrespective of their admission on the same or different dates). Therefore, in a case where notices of motion were given in both Houses on the same day, the fact that a notice is not admitted in one House will not necessitate constitution of a Joint Committee and the Speaker or the Chairman, as the case may be, can independently proceed to constitute a Committee.

## ISSUE II : WHETHER THE DEPUTY CHAIRMAN OF THE RAJYA SABHA WAS COMPETENT TO REFUSE THE MOTION?

**15.** The above issue stems from the contention of the petitioner that the Deputy Chairman of the Rajya Sabha, acting as the Chairman, was not even empowered to consider the question of admission of the motion, far less refusing to admit it, which has strongly been resisted by the respondents by contending that the office of the Chairman having

fallen vacant, in terms of the Constitutional scheme, it is the Deputy Chairman who has to perform the duties of the office of Chairman.

15.1. Petitioner contended that clause (a) of Section 2 of Inquiry Act defines Chairman as the Chairman of the Council of States. The fact that the legislature has used the word "means" and not the phrase 'means and includes' suggests that the definition is exhaustive. Thus, the Deputy Chairman could not have usurped the statutory power vested in the Chairman of the Rajya Sabha and act in his place, and consequently could not have taken any decision whatsoever concerning the motion.

15.2. Reference was made by Mr. Rohatgi to the rules framed under the Inquiry Act being the Judges (Inquiry) Rules, 1969[10]. After drawing our attention to Rules 16 and 17, it was argued that the rules expressly but narrowly enumerate certain functions that may be discharged by the Deputy Speaker or the Deputy Chairman in the absence of the Speaker or the Chairman, as the case may be. Emphasis was laid on the fact that these rules confer authority only in limited and specified circumstances, and do not extend to the exercise of powers contemplated under Section 3 of the Inquiry Act. The legislative intent is clear that the authority conferred on the Speaker or the Chairman under the Inquiry Act does not extend to the Deputy Speaker or the Deputy Chairman, unless expressly provided.

[10] Inquiry Rules

15.3. Drawing support from this Court's decision in ***Sub-Committee on Judicial Accountability v. Union of India***[11], it was contended that the rules of procedure of the Rajya Sabha cannot govern the proceedings under the Inquiry Act. The Inquiry Act operates as a code in itself. Paragraphs 91, 92, 95 and 96 of ***Sub-Committee on Judicial Accountability*** (supra) were relied on by him.

15.4. Should in terms of Article 91 the Deputy Chairman were held empowered to act as the Chairman and decide on the question of admission of a motion moved by certain members of the Rajya Sabha, Mr. Rohatgi next expressed an apprehension that a situation could arise where the Deputy Chairman himself is a signatory to the notice of motion in his capacity as a member of the House. In such a circumstance, if the Deputy Chairman were to take any decision on the motion as the Presiding Officer, it was feared that he would effectively be acting as a judge in his own cause.

**16.** *Per contra*, Mr. Mehta invited our attention to Part V of the Constitution, and in particular, Articles 89 and 91. Clause (1) of Article 89 provides that the Vice-President of India shall be the *ex officio* Chairman of the Council of States. Clause (2) thereof provides that the Council of States shall, as soon as may be, choose a member of the Council to be the Deputy Chairman.

16.1. Further, he referred to Article 91 of the Constitution. We can do no better than reproduce it in its entirety for a better understanding:

[11] (1991) 4 SCC 699

*91. Power of the Deputy Chairman or other person to perform the duties of the office of, or to act as, Chairman:*
*(1) While the office of Chairman is vacant, or during any period when the Vice-President is acting as, or discharging the functions of, President, the duties of the office shall be performed by the Deputy Chairman, or, if the office of Deputy Chairman is also vacant, by such member of the Council of States as the President may appoint for the purpose.*
*(2) During the absence of the Chairman from any sitting of the Council of States the Deputy Chairman, or, if he is also absent, such person as may be determined by the rules of procedure of the Council, or, if no such person is present, such other person as may be determined by the Council, shall act as Chairman.*

16.2. We were also shown Rule 7 of the Rules of Procedure of the Rajya Sabha, framed under Article 118 of the Constitution, which provides that the Deputy Chairman is elected by the members of the House. Rule 9 of the Rules of Procedure further delineates the powers of the Deputy Chairman, which reads as under:

*9. The Deputy Chairman or other member competent to preside over a sitting of the Council under the Constitution or these rules shall, <u>when so presiding, have the same power as the Chairman</u> when presiding over the Council and all references to the Chairman in these rules shall in these circumstances be deemed to be, references to any such person so presiding.*

(emphasis by counsel)

**17.** After having considered the constitutional and statutory provisions and the arguments advanced, we find ourselves in disagreement with the contention that the Deputy Chairman could not have rejected the motion.

17.1. Clauses (1) and (2) of Article 91, envisage two distinct scenarios: vacancy and absence, respectively. Clause (1) applies where the office of the Chairman is vacant or the Chairman is acting as the President, in which case the Deputy Chairman performs the duties of the office of the Chairman. Clause (2), by contrast, applies where the office is

not vacant but the Chairman is merely absent from a sitting, and the Deputy Chairman only acts as the Chairman for that sitting.

17.2. To read the statute in isolation of the Constitution would be grossly incorrect. True it is, this Court in ***Sub-committee on Judicial Accountability*** (supra) held that the rules framed under Article 118[12] of the Constitution would not govern the procedure under the Inquiry Act; however, the observations were made in the specific context of the issue which was considered. It is important to notice that neither Section 3(2) of the Inquiry Act nor its proviso was under consideration.

17.3. We see no reason why Article 91 of the Constitution should be kept aside when a court is tasked to make a meaningful interpretation of any provision of the Inquiry Act or, for that matter, any other enactment. After all, the Constitution is the supreme law of the land and all laws validly enacted owe their origin to the Constitution. To proceed in disregard of what the Constitution ordains would be an act of gross impropriety on our part.

17.4. Any interpretation of a statute which has the effect of generating an interpretation fouling the Constitution should be eschewed. A *fortiori*, a narrow interpretation of the word "Chairman" appearing in Section 3 overlooking Article 91 would be incoherent. The onerous obligation,

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[12] Rules of Procedure
(1) Each House of Parliament may make rules for regulating, subject to the provisions of this Constitution, its procedure and the conduct of its business.
…

*nay*, duty of the Deputy Chairman, to perform the duties of the office of the Chairman is sacrosanct to the functioning of the Council of States. The duties that the Chairman and the Deputy Chairman (in case of a vacancy in the former office) perform under the Inquiry Act cannot be separated from the office that they hold as the Presiding Officer of the House.

**18.** As regards Mr. Rohatgi's apprehension that the Deputy Chairman may himself be a signatory to the notice, apart from the fact that the situation posited is purely hypothetical and need not detain us, we are unable to agree with Mr. Rohatgi on this proposition.

18.1. We find it profitable to refer to the following observations made by the Privy Council in ***Attorney-General for Ontario v. The Hamilton Street Railway Company And Ors.***[13] as relied upon by the Constitution Bench in ***Central Bank of India v. Workmen***[14]:

> …They would be worthless as being speculative opinions on hypothetical questions. It would be contrary to principle, inconvenient, and inexpedient that opinions should be given upon such questions at all. When they arise, they must arise in concrete cases, involving private rights; and it would be extremely unwise for any judicial tribunal to attempt beforehand to exhaust all possible cases and facts which might occur to qualify, cut down, and override the operation of particular words when the concrete case is not before it.

18.2. Be that as it may, assuming that the Deputy Chairman happens to be a signatory to the motion, he must, in his administrative prudence recuse to act as the Deputy Chairman in that case. After all, the Rules of Procedure of the Rajya Sabha, under Rule 8, do provide for a panel

[13] [1903] A.C. 524
[14] 1959 SCC OnLine SC 1

of Vice-Chairmen to be nominated by the Chairman, who would act in the absence of the Chairman as well as the Deputy Chairman.

18.3. That apart, if at all such a situation arises, the doctrine of necessity could also compel the Deputy Chairman, or whosoever is the incumbent acting in place of the Chairman, to exercise the functions of the Chairman in his place.

18.4. Doctrine of necessity, as elaborated by a 3-Judge Bench of this Court in ***Election Commission of India v. Subramaniam Swamy***[15] would make it clear that despite the apprehension of a possible bias, the decision-making authority must proceed to adjudicate the issue in the interest of necessity. The relevant portion of the decision reads thus:

> **16.** We must have a clear conception of the doctrine. It is well settled that the law permits certain things to be done as a matter of necessity which it would otherwise not countenance on the touchstone of judicial propriety. Stated differently, the doctrine of necessity makes it imperative for the authority to decide and considerations of judicial propriety must yield. It is often invoked in cases of bias where there is no other authority or Judge to decide the issue. If the doctrine of necessity is not allowed full play in certain unavoidable situations, it would impede the course of justice itself and the defaulting party would benefit therefrom. Take the case of a certain taxing statute which taxes certain perquisites allowed to Judges. If the validity of such a provision is challenged who but the members of the judiciary must decide it. If all the Judges are disqualified on the plea that striking down of such a legislation would benefit them, a stalemate situation may develop. In such cases the doctrine of necessity comes into play. If the choice is between allowing a biased person to act or to stifle the action altogether, the choice must fall in favour of the former as it is the only way to promote decision-making. In the present case also if the two Election Commissioners are able to reach a unanimous decision, there is no need for the Chief Election Commissioner to participate, if not the doctrine of necessity may have to be invoked.
>
> (emphasis ours)

[15] (1996) 4 SCC 104

**19.** The argument touching upon the provisions of Rule 16 and 17 of the Inquiry Rules, howsoever appealing, is without merit and must be rejected. The Inquiry Rules envisage a possible absence of the Chairman whereas the Constitution provides for the Deputy Chairman in the event of the office of Chairman being vacant. Similar is the case for the Deputy Speaker of the Lok Sabha. Hence, when the statute is silent on a particular aspect, the Constitution and the doctrine of silence, must be read into the statute to fill its gaps. The Constitution is the supreme and overarching legal framework, to which all statutes must conform. For an elaborate understanding, it would be profitable to refer to a decision of this Court in ***Vipulbhai M. Chaudhary v. Gujarat Coop. Milk Mktg. Federation Ltd***[16], which expounded the law in the following terms:

> **24.** No doubt, in the cases referred to above, the respective Acts contained a provision regarding no confidence. What about a situation where there is no express provision regarding no confidence? Once the cooperative society is conferred a constitutional status, it should rise to the constitutional aspirations as a democratic institution. So, it is for the respective legislative bodies to ensure that there is democratic functioning. When the Constitution is eloquent, the laws made thereunder cannot be silent. If the statute is silent or imprecise on the requirements under the Constitution, it is for the court to read the constitutional mandate into the provisions concerned and declare it accordingly. Article 243-ZT has given a period of one year to frame/reframe the statutes in consonance with Part IX-B and thereafter i.e. with effect from 12-1-2013, those provisions which are inconsistent with Part IX-B, cease to operate.
>
> **25.** Silence in the Constitution and abeyance as well has been dealt extensively by Michael Foley in his celebrated work *The Silence of Constitutions*. To quote from the Preface:
>
> > "Abeyances refer to those constitutional gaps which remain vacuous for positive and constructive purposes. They are not, in any sense, truces between two or more defined positions, but rather a set of implicit agreements to collude in keeping fundamental questions of

[16] (2015) 8 SCC 1

political authority in a state of irresolution. Abeyances are, in effect, compulsive hedges against the possibility of that which is unresolved being exploited and given meanings almost guaranteed to generate profound division and disillusionment. Abeyances are important, therefore, because of their capacity to deter the formation of conflicting positions in just those areas where the potential for conflict is most acute. So central are these abeyances, together with the social temperament required to sustain them, that when they become the subject of heightened interest and subsequent conflict, they are not merely accompanied by an intense constitutional crisis, they are themselves the essence of that crisis."

In Part II, Chapter Four, the author has also dealt with the constitutional gaps and the arts of prerogative. To the extent relevant, it reads as follows (p. 82):

"Gaps in a constitution should not be seen as simply empty space. They amount to a substantial plenum of strategic content and meaning vital to the preservation of a constitution. Such interstices accommodate the abeyances within which the sleeping giants of potentially acute political conflict are communally maintained in slumber. Despite the absence of any documentary or material form, these abeyances are real, and are an integral part of any constitution. What remains unwritten and indeterminate can be just as much responsible for the operational character and restraining quality of a constitution as its more tangible and codified components."

**26.** Where the Constitution has conceived a particular structure on certain institutions, the legislative bodies are bound to mould the statutes accordingly. Despite the constitutional mandate, if the legislative body concerned does not carry out the required structural changes in the statutes, then, it is the duty of the court to provide the statute with the meaning as per the Constitution. "[T]he job of the Supreme Court is not to expound the meaning of the Constitution but to provide it with meaning." [ Walter Berns, "Government by Lawyers and Judges", *Commentary*, June 1987, 18.] The reference obviously is to the United States Supreme Court. As a general rule of interpretation, no doubt, nothing is to be added to or taken from a statute. However, when there are adequate grounds to justify an inference, it is the bounden duty of the court to do so.

"… It is a corollary to the general rule of literal construction that nothing is to be added to or taken from a statute unless there are adequate grounds to justify the inference that the legislature intended something which it omitted to express." [*Maxwell on Interpretation of Statutes* (12th Edn.) 33.]

According to Lord Mersey in *Thompson (Pauper)* v. *Goold and Co.* [1910 AC 409 (HL)] : (AC p. 420)

"… It is a strong thing to read into an Act of Parliament, words which are not there, and in the absence of clear necessity it is a wrong thing to do."

In the case of cooperative societies, after the Ninety-seventh Amendment, it has become a clear or strong necessity to do the strong thing of reading into the legislation, the constitutional mandate of the cooperative societies to be governed as democratic institutions.

> "*45.* … The constitutional provisions have to be construed broadly and liberally having regard to the changed circumstances and the needs of time and polity." [ The Constitutional Bench decision in *State of W.B.* v. *Committee for Protection of Democratic Rights*, (2010) 3 SCC 571, p. 591, para 45 : (2010) 2 SCC (Cri) 401]

**20.** History is replete with such instances where, in absence of the constitutionally delineated office, the deputy or the in-charge incumbent has performed the functions relatable to the constitutional office. The idea behind it is that vacancy or absence, for whatever reason, may not bring the constitutional machinery to a standstill. Ultimately, the show must go on to ensure that institutional continuity is maintained. We may take judicial notice of a couple of historic events. For instance, when former President Dr. Zakir Hussain passed away while in office on 3rd May, 1969, Vice President V.V. Giri was sworn in as the Acting President. Later, when Vice President V.V. Giri resigned to contest for the presidential election, Hon'ble Mohammad Hidayatullah, the then CJI acted as the President of India. While acting as such, His Lordship appointed Shri Shanti Swaroop Dhavan as the Governor of West Bengal. Similarly, when the former President Fakhruddin Ali Ahmed passed away on 11th February, 1977 while in office, the then Vice President Sri B.D. Jatti acted as the President and performed all the presidential functions, including appointment of Judges. Pointedly, Sri B.D. Jatti, as the acting President, appointed Sri Manoj Kumar Mukherjee in June, 1977 as an Additional Judge of the High Court at Calcutta (who then went on to serve as the Chief Justices of the Allahabad High Court and the Bombay High Court, and was later

elevated as a Judge of this Court). Obviously, such appointments could not have been nullified on the ground that the acting President, and not the President, had made such appointments.

**21.** If we were to read the law in the manner proposed by Mr. Rohatgi, we would be left with a constitutional vacuum which, in the absence of the Chairman of the Council of States, or the Speaker of the House of People, as the case may be, would render the provisions of the Inquiry Act otiose in the given circumstance.

**22.** Thus, Issue II framed above must be answered in the affirmative; we unhesitatingly hold that the Deputy Chairman was competent to consider the notice and refuse admission of the motion.

## ISSUE III: WHAT IS THE EFFECT, IF ANY, OF THE DEPUTY CHAIRMAN'S REFUSAL TO ADMIT THE MOTION ON THE VALIDITY OF THE SPEAKER'S ACTION UNDER SECTION 3(2) OF THE INQUIRY ACT?

### *WHAT, IF THE ORDER OF THE DEPUTY CHAIRMAN, WAS TO BE HELD ILLEGAL?*

**23.** Although the petitioner has not, as such, mounted any challenge to the decision of the Deputy Chairman of the Rajya Sabha in not admitting the motion, having regard to the gamut of arguments made, we deem it appropriate to proceed on the premise that the refusal of the Deputy Chairman of the Rajya Sabha to admit the motion is illegal (on a ground other than competence), and to examine what, if at all, would turn on such assumption. Prefatorily, we clarify that this exercise is to demonstrate that even on such a hypothetical plank, the edifice of the petitioner's case does not materially improve.

**24.** In brief, the relief sought by the petitioner cannot follow, for the simple reason that the validity of the Speaker's action does not hinge upon the correctness or otherwise of the decision taken by the Deputy Chairman.

**25.** As discussed by us in the preceding segment, the first proviso would spring into action only when notices of motion (given on the same day in both Houses) have been admitted in both Houses.

**26.** The logical culmination, thus, is even if the refusal by the Deputy Chairman (performing the duties of the office of the Chairman of the Rajya Sabha) were to be ignored as legally unsustainable, the factual as well as legal position would still remain as it is: that, as on the date when the Speaker acted, there was no admitted motion pending in the Rajya Sabha. In the absence of an admitted motion in one House, the statutory *sine qua non* for the applicability of the proviso stood unfulfilled.

**27.** What, then, would be the consequence of holding the refusal by the Deputy Chairman to be bad in law?

27.1. At the highest, a declaration that the Deputy Chairman of the Rajya Sabha had erred in the exercise of his statutory power by failing to act in accordance with law which would entail reconsideration of the notice by the Presiding Officer of the Rajya Sabha, in accordance with law. However, it cannot, retrospectively invalidate a lawful exercise of power already undertaken by the Speaker of the Lok Sabha, which was founded on an admitted motion.

27.2. Next, we ponder as to what is the error, if any, committed by the Speaker in this case. Facts noticed, reveal that the Speaker proceeded to constitute the Committee only after receiving an official communication that the notice given in the Rajya Sabha was not admitted by its Presiding Officer. The Speaker, in such a case, was adequately empowered to proceed in conformity with Section 3(2)(a), (b) and (c) of the Inquiry Act.

27.3. Viewed from the perspective of parliamentary functioning, members of the Lok Sabha who initiated the motion were exercising constitutional responsibility in terms of Article 124(4). Upon valid admission of their motion by the Speaker, they acquired a statutory entitlement to have the matter examined by a duly constituted committee. To interpret the statute in a manner that nullifies this entitlement due to procedural infirmities, assumed or real, in the other House, would tantamount to curtailing the participatory rights of elected representatives without statutory warrant. *Per contra*, the members of the Rajya Sabha suffer no prejudice, by the Speaker's action. They did have a right in law to claim that the notice given in the Rajya Sabha be dealt with in accordance with law by the competent authority. If at all they felt prejudiced, the decision of the Deputy Chairman refusing to admit the motion could have been laid to challenge by them. We assume that they did not prefer to challenge the decision because their purpose of having an inquiry conducted

under the Inquiry Act stood fructified, once the Speaker admitted the motion of the Lok Sabha members and constituted the Committee.

**28.** Thus, even if the act of the Deputy Chairman were to be held illegal and consequently set aside / or a reconsideration were ordered, the same would never result in restoration of the *status quo ante*. Even such limited declaratory relief, however, cannot be granted in the present case in the exercise of writ jurisdiction under Article 32 of the Constitution (discussed in detail hereafter).

***THE PREJUDICE ANGLE – NEED NOT BE TESTED***

**29.** With fervour, Mr. Mehta argued that the petitioner has not shown that any *"demonstrable, gross or real prejudice"* is caused to him owing to the Deputy Chairman's decision not to admit the motion and that, in fact, such a decision operated to his benefit. The mere loss of a Joint Committee, absent *mala fides* or tangible disadvantage, does not amount to legal prejudice.

**30.** On the other hand, Mr. Rohatgi, by referring to the celebrated decision in ***S.L. Kapoor v. Jagmohan***[17] submitted that prejudice caused need not be separately established; non-observance of principles of natural justice is by itself sufficient proof of prejudice. He reminded us of the oft-quoted observation of Hon'ble O. Chinappa Reddy, J. (as His Lordship then was) that *"(I)t ill comes from a person who has denied justice that the person who has been denied justice is not prejudiced"*.

[17] (1980) 4 SCC 379

**31.** We have heard arguments that initiation of proceedings against the petitioner has caused irreparable reputational and constitutional prejudice and that the doctrine of "no prejudice" cannot apply where mandatory safeguards are violated. This argument presupposes illegality in the constitution of the Committee which, for reasons already discussed, we are unable to accept. Once the Committee is lawfully constituted, the statute itself provides for elaborate safeguards at the investigation stage, including framing of charges, opportunity of defence, cross-examination of witnesses, and adjudication by a body comprising of senior constitutional functionaries. At this nascent stage, no civil consequences follow; the motion itself remains pending and can succeed only if both Houses ultimately adopt it by the constitutionally mandated special majority.

**32.** Mr. Mehta argued that constitution of a Single-House Committee instead of a Joint-Committee, on facts and in the circumstances, does not undermine the fairness of the procedure. We accept this submission. Reputational injury, howsoever unfortunate, cannot be a ground to subvert a constitutionally sanctioned statutory process, particularly when the Parliament has consciously designed a multi-tiered safeguard structure before any adverse consequence can ensue.

**33.** We also find ourselves in complete accord with Mr. Mehta's contention that the ultimate safeguard of Parliamentary approval under Article 124(4) also remains intact. Germane, it is, to note that even after the Committee submits its report, the constitutional and statutory scheme

does not render the petitioner remediless or exposed to automatic consequences. The report, by itself, is neither determinative nor self-executory. Rather, it merely triggers the next stage of Parliamentary consideration, where the motion for removal, kept pending till then, is required to be taken up separately in each House and can culminate in an address to the President only upon satisfaction of the rigorous special majority stipulated under Article 124(4) of the Constitution. Thus, in consideration of the edifice of the parties' submissions, even from the standpoint of the petitioner, no vested or accrued right gets defeated.

**34.** Undoubtedly, the removal of a Judge of a High Court is constitutionally anchored in Article 217 read with Article 124 of the Constitution, with the procedural framework being provided by the Inquiry Act. That said, a grievance raised by a Judge, who, though a constitutional functionary by virtue of the office held, is nonetheless a public servant, questioning the desirability, advisability or necessity of initiating proceedings, or alleging procedural infirmities therein, partakes the character of a service-related dispute. This Court has, in a long line of decisions, consistently held that every infraction of the rules governing discipline and control does not, by itself, vitiate disciplinary proceedings. A plea founded on infraction of procedure must necessarily be examined through the prism of prejudice, having regard to the nature of the rule alleged to have been infracted, namely, whether it is mandatory or merely directory. Such an enquiry presupposes the existence of

infraction of a governing rule. In the present case, however, it is unnecessary to undertake such an exercise, for the petitioner has failed to establish infringement of any vested or accrued right.

***EFFECT OF NOT CHALLENGING THE DECISION OF THE DEPUTY CHAIRMAN***

**35.** The decision of the Deputy Chairman is not part of the writ petition because despite the petitioner asking for it, the same was not furnished to him. In fact, it is the petitioner's claim that he derived knowledge of such decision once the counter affidavit to the writ petition came to be filed by the respondents. Acting in deference to our observation in Court on 7th January, 2026, the decision of the Deputy Chairman was placed on record simultaneously with furnishing a copy thereof to the petitioner.

**36.** Upon receipt of the decision of the Deputy Chairman together with the "draft decision" of the Secretary General, Rajya Sabha, no exception has been taken by the petitioner, in black and white, either by amending his writ petition or by filing an affidavit obviously because the decision does not adversely affect him. Rather, the decision is in the petitioner's favour in the sense that the Deputy Chairman did not, *inter alia*, find sufficient material to substantiate the claim of the notice givers that a case for removal of the petitioner from office by proceeding under the Inquiry Act had been set up.

**37.** However, in course of oral hearing, the thrust of Mr. Rohatgi's submission has been that the decision of the Deputy Chairman, for

reasons urged, is *non-est*; therefore, the clock must be put back to explore a meeting of minds of the Presiding Officers of the two Houses for constitution of a Joint Committee.

**38.** Acceptance of Mr. Rohatgi's argument would essentially require us to not only examine the legality, propriety and/or correctness of the decision of the Deputy Chairman but to quash the same.

**39.** The question as to whether a court can quash an order without the same being subjected to challenge came up for consideration in ***Hindustan Petroleum Corpn. Ltd. v. Sunita Mehra***[18]. This Court held:

> **3.** The short question that arises for consideration in this case is whether there being no challenge to the order of eviction passed by the Estate Officer under the Act, in the writ petition was the High Court justified in setting aside that order in appeal. It was urged that after the order of eviction was passed the writ petition was not amended by challenging the order of eviction passed by the Estate Officer. No ground as regards its invalidity was also stated. It is not disputed that the writ petition was not amended after the order of eviction was passed by the Estate Officer. Even in the letters patent appeal, the order of eviction was not made to form part of the records of the case and under such circumstances the Division Bench of the High Court was not legally justified in setting aside the order dated 24-2-1982 passed by the Estate Officer. Consequently, the appeal succeeds and is allowed. There shall be no order as to costs.

**40.** We are in agreement with the aforesaid view. If an order has been passed to the prejudice or detriment of a suitor and such suitor seeks to have the order declared invalid and quashed in writ proceedings, it is imperative that he lays the order to a challenge, makes specific averments and urges cogent legal grounds to demonstrate its invalidity to enable him claim relief based thereon. This is required to serve as

[18] (2001) 9 SCC 344

a notice to the opponent as to what are the grounds likely to be urged based whereon the suitor would seek to have the order quashed. Unless the opponent is put to notice, he cannot, perhaps, by projecting his own imagination discover all that may be in the contemplation of the suitor to be used and established against the opponent. Once put to notice, the opponent is entitled to raise an effective defence in support of the order under challenge to persuade the court not to quash it. This is a very basic rule of essential justice, which serves twin purposes: (i) of abortion of any attempt to spring surprises at the hearing; and (ii) prevention of miscarriage of justice.

**41.** In ***Chandigarh Administration v. Laxman Roller Flour Mills (P) Ltd.***[19], this Court succinctly enunciated as follows:

> **4.** A perusal of the relief extracted above shows that the writ petitioner-respondent never asked for any relief in the writ petition commanding the Chandigarh Administration to issue completion certificate in its favour. Learned counsel for the respondent frankly stated that there is no allegation in the writ petition to the effect that Chandigarh Administration has illegally withheld the completion certificate. It is settled law that unless the allegations are made in the writ petition and a relief to that effect is also prayed for in the writ petition, the High Court is not justified in issuing any order in excess of the relief prayed for in the writ petition. We are, therefore, satisfied that in the absence of pleading and prayer in the writ petition, the High Court fell in error in issuing directions to the appellant to issue completion certificate to the writ petitioner-respondent. In such circumstances, we set aside the order of the High Court to the extent it directs the Chandigarh Administration to issue completion certificate to the writ petitioner-respondent. The appeal is thus allowed. There shall not be any order as to costs.

**42.** What has been laid down in ***Sunita Mehra*** (supra) and ***Chandigarh Administration*** (supra) in relation to exercise of writ power under

[19] (1998) 8 SCC 326

Article 226 of the Constitution would equally extend to exercise of similar powers under Article 32.

**43.** A profitable reference may be made in this regard to the decision of this Court in ***Amina Marwa Sabreen v. State of Kerala***[20] as far as exercise of writ jurisdiction under Article 32 is concerned. Relevant paragraphs from such decision read as follows:

> **14.** Reverting to the preliminary objections raised by the respondent State, as already mentioned above, there is no reference to the G.O. in the entire writ petition. This document is not even part of the writ petition. Therefore, there are no foundational facts and/or pleadings in the writ petition challenging this G.O. as unconstitutional. More importantly, there is no prayer in the writ petition seeking quashing of this G.O. Even when the learned counsel for the State had pointed out fundamental infirmity in the writ petition, no attempt was made by the petitioners to amend the writ petition so as to incorporate challenge to the said G.O. as well. In the absence of any pleadings and the prayer seeking quashing of the said G.O., it is not permissible for the petitioners to seek a relief by making oral submissions in this behalf.
> **15.** For the aforesaid reasons, we dismiss the writ petition on the ground of maintainability only as we do not deem it necessary to go into the issue on merits for lack of pleadings as well as requisite prayers in this behalf. No costs.

**44.** Tested on this anvil, the petitioner's grievance plainly cannot be addressed. In the absence of any challenge to the decision of the Deputy Chairman, we find no reason to outlaw it.

**45.** It is trite that writ jurisdiction is exercised to test the legality of an existing order, and not to grant relief on the hypothesis that another authority ought to have acted differently. The Inquiry Act does not contemplate constitution of two committees by the Presiding Officers of both Houses, as rightly pointed out by Mr. Mehta. Thus, if at all, two committees are constituted, one each by one Presiding Officer of a

[20] (2018) 14 SCC 193

House, to investigate common allegations against a Judge, any right can accrue to the Judge to question such constitution as well as the legality of the subsequent process or outcome. This is because the legal framework does not allow parallel proceedings by two committees. Such an occurrence could be rare and if the occasion therefor arises, certainly the court may interfere. However, that obviously is not the case here. Judicial interference, bearing in mind the stage the proceedings have reached, would amount to travelling beyond the pleadings and trenching upon areas where no enforceable legal injury has yet arisen. The settled limits of writ jurisdiction do not permit the Court to confer relief in vacuum, divorced from a direct challenge to the order which is alleged to be the source of illegality.

### ISSUE IV: DRAFT DECISION PREPARED BY THE SECRETARY-GENERAL OF THE RAJYA SABHA – WHETHER JUSTIFIED IN LAW?

**46.** For the limited purpose of future cases of a similar nature, and for no other purpose whatsoever, we briefly record our opinion on the procedure leading to the decision of the Deputy Chairman. It is clarified in unequivocal terms that this discussion is purely academic and shall not, directly or indirectly, be relied upon or invoked to claim any benefit, leverage, or advantage by the petitioner.

**47.** We were furnished with a certified copy of the decision taken by the Deputy Chairman of the Rajya Sabha declining to admit the motion. The document, spanning seven pages, comprises fifteen numbered paragraphs and one unnumbered paragraph. The fifteen numbered

paragraphs set out what is described as a "draft decision of the Chair," concluding that the notice was not "in order," which was thereafter placed before the Deputy Chairman for approval. In the unnumbered paragraph, the Deputy Chairman expressly concurred with the decision of the Secretary General in the following terms:

> *"Having carefully considered the facts of the case and legal position enunciated above, I agree with the conclusion drawn. The Notice given by Hon'ble MPs is found to be not in order and, thus, not admitted. Secretary-General, Lok Sabha, may be informed accordingly."*

**48.** Upon a reading of the document in open court, we expressed our *prima facie* reservations regarding the conduct of the Secretary General in holding the notice to be not "in order". The same were not fully addressed by the submissions advanced by Mr. Mehta. For the reasons set out in the paragraphs that follow, we are unable to find a clear legal basis for the course of action adopted by the Secretary General. To facilitate a clearer understanding of this conclusion, we deem it appropriate to reproduce paragraph 14 of the said document, which sets out the reasons on the basis of which the Secretary General found the notice to be not "in order":

> "11. Pursuant to the directions of the then Chairman, a closer scrutiny of the said Notice of Motion was undertaken, which revealed the following deficiencies:
>
> (i) The said Notice of Motion is not drawn in proper terms to elicit a decision of the House;
> (ii) The said Notice of Motion has relied on certain documents and material facts. However, no such authenticated copy of these documents and reports has been enclosed for consideration of the Chairman, Rajya Sabha.
> (iii) The prayer in the said Notice of Motion request that "*the present Motion under section 3(1)(b) of the Judges (Inquiry) Act, 1968 ought to be admitted in the House*". However, section 3 (1) (b) of the Act provides that "*the Speaker or, as the case may be, the*

*Chairman may, after consulting such persons, if any, as he thinks fit and after considering such materials, if any, as may be available to him, either admit the motion or refuse to admit the same*". It may be seen that section 3 (1) (b) gives discretion to admit or refuse to admit the Notice of Motion to the Chairman, Rajya Sabha and not to the House. Accordingly, an incorrect provision has been invoked in the prayer in the said Notice of Motion invoking incorrect provision of the Act display a casual and cavalier approach to an extremely serious matter.

(iv) The Notice of Motion also contains certain factual inaccuracies. In the '**Sequence of Events**', it is stated that "*… on 3 March, 2025, the three-member In-House Committee conducted a spot inspection at the site of the incident, during which electronic evidence was examined and statement of 55 witnesses were record* (sic. recorded)*. Based on the findings, a report was finalized and submitted to the Hon'ble Chief Justice of India on 5 May 2025. This 64-page report was published in the public domain by multiple news portals on 19 June, 2025*". **It needs to be seen that the impugned fire incident at the residence of Justice xxxx occurred on the night of 14 March, 2025.** It is highly unlikely that the spot inspection could have taken place on 3rd March, 2025 i.e. the day before the fire incident. Further, in absence of any material record appended with their said Notice of Motion, it is not possible to determine the veracity of these facts.

(emphasis supplied in original)

**49.** The material placed by the Secretary General before the Deputy Chairman raises certain concerns. First, there appears to be an insistence on the use of 'proper terms' for the notice, a requirement which does not find express recognition in law. Secondly, a requirement seems to have been read into the law for furnishing authenticated documents in support of the material facts, which, particularly in view of documents already in the public domain, may not have been necessary at that stage. In any event, the substance of the allegations was required to be considered, as there was no statutory obligation upon the notice-givers to produce supporting evidence at that juncture. Thirdly, exception appears to have been

taken to an incorrect reference to a statutory provision, without due appreciation of the legal position governing the subject. Fourthly, the Secretary General appears to have examined the correctness of the facts pleaded, including with reference to certain dates, thereby traversing beyond the scope of his designated role. The Inquiry Act does not contemplate a substantive assessment of the merits of the allegations by the Secretariat of a House. The Secretary General's role was expected to remain confined to administrative scrutiny, such as verification of procedural compliance, and could not extend to assuming a quasi-adjudicatory function.

**50.** It is relevant to note that neither the Inquiry Act nor the Rules framed thereunder prescribe a mandatory form for a notice of motion. In the absence of defined parameters, it is not readily apparent on what basis the Secretary General concluded that the Notice of Motion was not 'in order.' Where no prescribed format exists, a notice containing allegations of impropriety against a Judge could not reasonably be treated as ineffective solely on account of perceived deficiencies in drafting or form. The role of the Secretary General was confined to placing the notice before the competent authority, namely, the office of the Chairman, without expressing any conclusion as to its admissibility.

**51.** That the Secretary General went beyond a purely administrative role is apparent from the language employed in the document itself. The concluding paragraph (paragraph 15) thereof states: "***A draft***

***decision of the Chair****, indicating the aforesaid Notice of Motion not being in order and hence, non est is accordingly placed for approval. Subject to its approval, a communication would be sent to Secretary-General, Lok Sabha"*. (emphasis ours)

**52.** Without venturing further into the matter, we consider it appropriate to note that the manner in which the notice of motion was processed at the Secretariat level does not fully align with the role contemplated under law.

**53.** That said, we repeat, these observations are confined solely to the procedural aspects noted above and are occasioned by the particular course of action adopted at the Secretariat level. Since the decision of the Deputy Chairman declining to admit the motion is not under challenge, and has been taken independently in accordance with his constitutional role, these observations do not, in any manner, impinge upon or affect the validity of that decision.

**54.** We do hope that no other Judge faces proceedings for his removal from service on allegations of misbehaviour. Should, at all, there be an unfortunate recurrence of a Judge *prima facie* indulging in misbehaviour and the representatives of the people of the nation demand an investigation based on allegations of misbehaviour, it would be just and proper if Secretariat exercises restraint and leaves it to the Speaker of the Lok Sabha or the Chairman of the Rajya Sabha, as the case may be, to decide the question of admission of a motion instead of concluding as to what should be the future course of action.

## SO FAR

**Issue I :** Does the first proviso to Section 3(2) of the Inquiry Act require the constitution of a Joint Committee where notices, having been given in both Houses on the same day, is later followed by refusal to admit the motion by the Presiding Officer of one House and admission of the motion by the Presiding Officer of the other House?

- No, it does not. The proviso applies to only one specific situation, namely, where notices of motion given on the same day have been admitted by both Houses. It does not restrict or negate the individual authority of either House of Parliament.

**Issue II :** Whether the Deputy Chairman of the Rajya Sabha was competent to refuse admission of the notice of motion?

- Yes, he was.

**Issue III :** What is the effect, if any, of the Deputy Chairman's refusal to admit the motion on the validity of the Speaker's action under Section 3(2) of the Inquiry Act?

- There is no need to examine this issue, as the order of the Deputy Chairman is not under challenge. *Arguendo*, even if it were examined, it would have no effect, since the Speaker committed no illegality in constituting the committee.

**Issue IV:** Whether the draft decision prepared by the Secretary-General of the Rajya Sabha recording that the notice of motion given to the Chairman is not "in order" justified in law?

- No; does not align with the procedure contemplated under law.

**ISSUE V : WHETHER THE PETITIONER IS ENTITLED TO ANY RELIEF?**

**55.** The extraordinary remedy under Article 32 is confined to enforcement of Fundamental Rights and does not extend to issuing advisory or corrective directions in relation to internal statutory mechanisms of the Parliament, where no present or inevitable infraction of any Fundamental Right is evinced. Petitioner is, thus, not entitled to any relief.

**CONCLUSION**

**56.** For the foregoing reasons, no interference is called for. The present writ petition stands dismissed.

**.....J.**
**(DIPANKAR DATTA)**

**.....J.**
**(SATISH CHANDRA SHARMA)**

**New Delhi;**
**January 16, 2026.**

## APPENDIX- I

## WRITTEN SUBMISSIONS ON BEHALF OF PETITIONER

### A. CHALLENGE BEFORE THE HON'BLE COURT

1. The Petition challenges the unilateral constitution of the Judges Inquiry Committee ("**JIC**") by the Speaker under Section 3(2) of the Judges (Inquiry) Act, 1968 (the "**Act**") on 12.08.2025 after admitting a motion given in the Lok Sabha on 21.07.2025 seeking removal of the Petitioner as a Judge, despite a motion presented in the Rajya Sabha on the same day not having been admitted (as communicated to retitioner during the course of hearing). The motion was stated to have been "not admitted" in the Rajya Sabha on 11.08.2025 pursuant to a scrutiny undertaken by the Secretary General of the Rajya Sabha and affirmed by the Deputy Chairman, purportedly seeking to derive authority from Article 91 of the Constitution of India.
2. Petitioner contends that the action of the Speaker is contrary to the first proviso of Section 3(2) of the Act, thus vitiating the constitution of the JIC and all consequential proceedings. This, since where notices of motion are given on the same day before both Houses of Parliament, the JIC could not have been constituted unless (a) both Houses had admitted the motions; and (b) a JIC constituted thereafter jointly by the Hon'ble Speaker and Hon'ble Chairman.
3. It is further submitted that the Deputy Chairman could not have exercised the powers comprised in Section 3(2) which stands exclusively reserved in the Hon'ble Chairman as the persona designata. Article 91 is merely a *pro tem* measure limited to ensuring continuity of proceedings in the House and cannot extend to statutory powers solely exercisable by the Hon'ble Chairman.

### B. PETITION IS MAINTAINABLE

4. Contrary to the counter-affidavit, during oral arguments, Respondents did not challenge the maintainability of the Petition. In any event, it is

settled law that all processes relating to the removal of a Judge under the Act [up until the point proceedings in the House(s) commence upon submission of a Report by the JIC] are proceedings outside the House, amenable to judicial review as these flow from Article 124(5), and not Articles 118, 119 or 122 **[Sub-Committee on Judicial Accountability v. UoI [*(1991) 4 SCC 699 - paras 76-79, 81-82, 86, 91 & 93-101*].**

## C. CONSTITUTION OF JIC IS CONTRARY TO LAW

5. Indisputably, the Act is a plenary and comprehensive legislation referable to Article 124(5) and thus liable to be strictly construed. The scheme of the Act, broadly, conceives of four different parts to the process of removal.
   a. Introduction [Section 3(1)]: All Members of Parliament have a right to present notices of motion seeking removal of a Judge. Where motions are endorsed by a specific number of Members [100 in the Lok Sabha, 50 in Rajya Sabha], it leads to the next step — consideration of the motion by the Speaker or Chairman to decide whether it merits admission.
   b. Admission / Rejection [Sections 3(1) and (2)]: The admission or rejection of a motion is a statutory power of immense moment and thus vested in two high constitutional functionaries, namely, the Speaker and Chairman who are to independently assess and evaluate whether the notice of motion merits admission and the initiation of further steps under the Inquiry Act.
   c. Committee Formation and Report (Sections 3-5): In the event a motion is admitted, it is kept pending enabling the Hon'ble Speaker or the Chairman, as the case may be, to constitute a three-member committee for inquiring into the allegations. This committee must conduct an inquiry as per the provisions of the Act and its Rules and furnish its report within the specified time-frame.
   d. Consideration of Report and Address (Section 6): Only if the report of the committee recommends the removal of the Judge, would it

then be transmitted for discussion by Members in the Houses, which may thereafter resolve to present a joint address to the President of India seeking removal of the Judge in question.

6. Section 3 constitutes the fulcrum of the legislation, and covers the entire field of presentation and consideration of motions. Since it constitutes a constitutional safeguard, it is liable to be interpreted strictly. It exhausts all contemplated scenarios on the giving of motions, namely: (i) motion in one House alone; (ii) motions in both Houses on ditterent days (in which case the second *proviso* applies); and (iii) motions given in both the Houses on the same day (triggering the first *proviso*). Undisputedly, in the present case motions were given on the same day in both the Houses and the challenge thus centers upon the first *proviso*.
7. As per the Petitioner, the JIC could not have been constituted unless both the Speaker and the Chairman had admitted the motions in both Houses and only thereafter proceeded to constitute the JIC jointly. The use of double peremptory negatives ("no" committee and "unless") is evidence of a manifest intent to underscore its mandatory and non-derogable character **[*Fuleshwar Gope v. Uol [2024 SCC OnLine SC 2610 - para 27; Vijay Narayan Thatte v. State of Maharashtra (2009) 9 SCC 92 - paras 5, 10, 12, 13, 14 & 15*].**
8. Since the power to admit a motion stands conferred upon two co-equal constitutional authorities, the statute mandates concurrence to avoid conflicting decisions, separate committees coming to be constituted or parallel inquiries being initiated. A decision not to admit if taken by one of those authorities would undoubtedly cast a cloud of invalidity on the other. It is these considerations which inform the mandate of concerted action.
9. Implicit in the first *proviso* is the situation where one motion is rejected and one admitted. In such a situation the motion would clearly fail and cannot be proceeded with. Lapsing of a motion is a consequence that follows not only from the plain and exhaustive words of the proviso but also from the fact that both the Houses are equal and the determination

of the Speaker and Chairman (as the case may be) to not admit a motion cannot be overridden or overruled by a contrary view of the other functionary. To read the *proviso* as not providing for that consequence would mean that Section 3 is incomplete.

10. It would be incorrect and inconceivable to assume that Parliament was either not cognizant or unaware of such a possibility or conundrum even though it chose to introduce a specific provision to deal with motions presented on the same date and promulgated a complete and exhaustive code. Legislative oversight cannot be readily assumed or inferred.
11. The admission of both motions is not liable to be read as a condition precedent for the applicability of the first *proviso*. This condition is indelibly linked to the expression 'no committee shall be constituted…'. If the Inquiry Act were to be interpreted in any other manner, it would compel one to hold that it fails to provide for a situation where one of the motions presented on the same day is rejected. This, despite the Inquiry Act having been acknowledged to be a complete code, a comprehensive legislation on the subject of removal, and Section 3 thereof constituting its center piece.
12. Respondents' interpretation that the first *proviso* applies only when both motions are "admitted" is wrong. This interpretation seeks to introduce the phrase 'given and admitted' into the statute and contradicts settled principles of statutory interpretation **[G Narayanaswami v. G Pannerselvam, (1972) 3 SCC 717 – para 18-20]**. This more so since adhering to the plain text of the statute does not lead either to absurdity or to any unworkable situations.
13. Respondents' contention that there is no prejudice caused due to non-compliance with the statute cannot be countenanced **[S.L. Kapoor v. Jagmohan, (1980) 4 SCC 379]**. The doctrine of prejudice or useless formality has no application to mandatory statutory safeguards and more so when we are concerned with salutary constitutional safeguards. Petitioner is facing removal proceedings even though one of the two similar and identical motions were found not to warrant further

consideration. The mere fact that an adverse report may ultimately be placed before both Houses cannot justify a Judge being subjected to a process which is constitutionally infirm and unwarranted. Additionally, the mere right of addressing both Houses at a belated stage cannot overcome the prejudice caused. Last but not the least, the reputational damage caused as a result of the impugned proceedings is prejudice in itself.

## D. CONSIDERATION OF RAJYA SABHA MOTION IS CONTRARY TO LAW

14. The Rajya Sabha motion was "not admitted" by the Deputy Chairman on 11.08.2025. No formal order to this effect has been communicated or supplied to Petitioner. The file notings supplied demonstrate that the consideration on the motion was by the Secretary General (Respondent No. 2) and merely "affirmed" by the Deputy Chairman.
15. Petitioner submits that the Deputy Chairman lacked authority to exercise any powers in respect of the motion given on 21.07.2025. The Act defines "Chairman" and "Speaker" exhaustively by using the categorical "means", rather than the fluid or expansive "means and includes". The use of "means" is intended to be an explicit statement of the full connotation of a term, thus, leaving no room for ambiguity. The definitions (absent in the Bill) were included in the Act to "*ensure and maintain the independence of the judiciary*" **[Joint Committee Report on the Judges (Inquiry) Bill, 1964]**. Where any role was perceived for the Deputies, it had been specifically carved out (*See* Rules 16 & 17, Judges Inquiry Rules, 1969) and which too is plainly a limited, expressly defined role, confined to proceedings in the House *after* the submission of the JIC Report.
16. Article 91 confers only limited, *pro tem* authority relating to proceedings in the House and cannot extend to statutory functions under the Act. Parliament was conscious of Article 91 and still adopted exhaustive definitions under the Act reserving admission powers in the

Speaker/Chairman alone as *persona designata*. The Parliament appears to have been guided *inter alia* by Article 100 which gives only a casting vote to the Speaker/Chairman (unlike a member of the House including the Deputy Chairman who can sign the motion and vote on it if the Report calls for removal of the Judge).

17. Further, unlike Article 65(3) which effects a complete substitution of authority, Article 91 envisages only a *pro tem* role. Accepting the Respondents' contention would mean that any other member" temporarily presiding over House proceedings (in the absence of the Deputy Chairman) could also exercise powers under Section 3. This would clearly be contrary to the import and intent of the statute.

Therefore, Petitioner submits that for all the reasons set out above. the constitution of the JIC is liable to be declared *non est*, and this Hon'ble Court ought to allow the present petition.

Filed on: 12.01.2026
Place: New Delhi.

## APPENDIX- II

SHORT NOTE

**ON BEHALF OF TUSHAR MEHTA, SOLICITOR GENERAL OF INDIA**

### A. PRELIMINARY SUBMISSIONS

1. The Petitioner has assailed the action of the Hon'ble Speaker admitting the notice of motion on 12.08.2025 and the constitution of a three-member Inquiry Committee under Section 3(2) of the Judges (Inquiry) Act, 1968 ("**Act**"). It is the Petitioner's case that since notices of motion were "**given**" in both Houses on the same day, the proviso to Section 3(2) mandated that no Committee could be constituted unless the motion was **admitted** in both Houses and, if admitted, the Committee must be constituted **jointly** by the Speaker and the Chairman.

2. It is respectfully submitted that the Writ Petition is misconceived and founded on an erroneous reading of the statutory scheme. At the outset, the Respondents' have divided their arguments broadly on the following four issues :

a. The proviso to Section 3(2) of the Act is attracted only where the motions are "**admitted**" in both Houses, and not just being "**given**"
b. In any event, the Petitioner demonstrates no real, demonstrable and gross prejudice so as to invoke the extraordinary jurisdiction of this Hon'ble Court under Article 32; and
c. The Rajya Sabha motion was, upon scrutiny, expressly "not admitted" by the Deputy Chairman, who was validly acting as the Chairman under Article 91 when the office fell vacant and was constitutionally and statutorily permitted to exercise such a power. This order is not and could not have been challenged.

### B. INTERPRETATION OF PROVISO TO SECTION 3(2)

3. It is respectfully submitted that Articles 121 and 211 of the Constitution prohibit any discussion in the House with regard to the conduct of any judge of the Supreme Court or the High Court, except upon a motion for

presenting an address to the President praying for the removal of the Judge. A perusal of Article 124(4) read with Article 217 and 218, makes it crystal clear that a Judge of the Supreme Court or the High Court cannot be removed from office except on the ground of proven misbehaviour or incapacity.

4. Therefore, the constitutional scheme for removal of a Judge culminating in an order of the Hon'ble President is passed only after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members present and voting, ensuring stringent thresholds that operate as a substantive inbuilt safeguard. It ensures that such motions for removal of Judges are not initiated in a routine manner and that the process is insulated against proceedings founded on frivolous allegations, extraneous considerations or patently false claims.

5. It is thus respectfully submitted that by virtue of Article 122, these notices of motion cannot be impugned in a court of law as long as they do not contravene any constitutional or statutory mandate.

6. The Act incorporates an important safeguard in Section 3(1) by drawing a clear distinction between a motion being "**given**" and its subsequent "**admission**". A motion does not automatically set the statutory machinery in motion merely upon being "given". It is only upon "admission" that the statutory consequence of constituting a three-member Committee follows. The Legislature has, therefore, consciously used two distinct expressions, and the language employed is the determinative factor of the legislative intention. At this stage, it is also pertinent to note that, as per Rule 2(e) of the Judges (Inquiry) Rules, 1969, "motion" is defined to mean **the motion admitted under Section 3(1)**.

7. As per Section 3(1) of the Act, "**giving**" a motion is essentially a ministerial act of presentation/filing, whereas "**admission**" is a substantive, independent decision that necessarily entails due scrutiny and

application of mind by the Speaker or the Chairman after consulting such person, if any, as he thinks fit. Thus, the Speaker or the Chairman has an option either to *admit* the motion or *refuse to admit* the motion.

8. This Hon'ble Court in ***P.D. Dinakaran (2) v. Judges Inquiry Committee, (2011) 8 SCC 474*** had held that the Speaker/Chairman, is **not bound** to admit the motion submitted with the requisite numerical strength as a matter of course because he had the discretion under the Act to consult such persons as he may think fit and consider any material which is made available to him before taking a decision on the admission of motion. This Hon'ble Court also held that, in a given case, he may even choose to refuse to admit the motion.[21]

9. It is crucial to highlight that this Hon'ble Court in ***Sarojini Ramaswami (Mrs) v. Union of India, (1992) 4 SCC 506*** has also held the following:

> **95.** ".....The law so enacted under Article 124(5) provides that any accusation made against a sitting judge to enable initiation of the process of his removal from office has to be only by not less than the minimum number of Members of Parliament specified in the Act, all other methods being excluded. **On initiation of the process in the prescribed manner, the Speaker/Chairman is to decide whether the accusation requires investigation. If he chooses not to act on the accusation made in the form of motion by the specified minimum number of Members of Parliament, the matter ends there. On the other hand, if the Speaker/Chairman, on a consideration of the materials available and after consulting such persons as he thinks fit, forms the opinion that a prima facie case for investigation into the accusation against the Judge is made out, he constitutes a Committee of judicial functionaries in accordance with Section 3(2) of the Act.**"

10. If this condition of an independent application of mind with an order "admitting" the motion is not read, there is a possibility of members gathering mere requisite numerical strength "filing" motions even on the basis of some unpopular judgment given by a Judge resulting in the

[21] Paragraphs 26 & 31 of *P.D. Dinakaran* (2). See also ***Krishna Swami v. Union of India***, (1992) 4 SCC 605 ¶45.

appointment of a Committee. Such a reading of Section 3(1) would render a mere achievement of numerical strength as the only condition precedent for forming a Committee under Section 3(2), rendering the second part of Section 3(1) otiose.

11. Further, it is humbly submitted that in the absence of a mandatory requirement of independent scrutiny culminating in a formal order of "admitting" the motion, the statutory safeguard would be rendered illusory. Mere fulfilment of the numerical strength of the members could trigger the process of removal by simply "giving" the notice of motion, even on the basis of an unpopular judgment given by a Judge, thereby mechanically leading to the constitution of a Committee without any threshold assessment of whether the motion warrants such grave proceedings.

12. The procedure contemplated in the Act is *sui generis* and will have to be interpreted in view of the constitutional scheme in general and Articles 121 and 211 in particular. Section 3(2) of the Act also specifically and consciously uses the word "*if the motion referred to in subsection (1) is* ***admitted***". This further highlights the significance of "admission" of the motion, which is different from mere "giving" of the motion. It thus provides that if a motion for removal of a Judge is admitted by the Speaker or the Chairman, the Speaker or the Chairman shall keep the motion pending and "constitute, as soon as may be," a three-member Committee to investigate the grounds for removal of a judge.

13. It is pertinent to note that the proviso to Section 3(2) stipulates that where notices of a motion are given on the same day in both Houses of Parliament, "*no Committee shall be constituted unless the motion has been admitted in both Houses*" and it is only when the motion is admitted in both Houses, that the Committee shall be constituted jointly by the Speaker and the Chairman. Thus, when notices of motion are initiated simultaneously in both Houses, the law envisages a joint action **only if** both Houses admit the motion. The proviso is intended to avoid two committees being

constituted simultaneously to inquire into the same allegations, which may result in conflicting views.

14. The logical corollary of this is that when notices of motion are given on the same day, but only admitted by one House and rejected by the other House, then the Speaker/Chairman, as the case may be, who admits the motion is well within its statutory right to keep it pending and constitute a Committee as per Section 3(2) of the Act.

15. In the facts of the present case, notices of motion were indeed submitted on the same day, i.e., 21 July 2025, in both Houses of Parliament. On the one hand, the notice of motion for removal given in the Lok Sabha was received by the Hon'ble Speaker at **12:30 pm** and was signed by 146 members belonging to different political parties. On the other hand, the notice of motion given in the Rajya Sabha was signed by 62 members, and the then Chairman made an announcement in the House between **4:07 pm to 4:19 pm**. The address of the then Chairman makes it evidently clear that he was neither "admitting" the motion nor "refusing to admit" the motion.[22] Moreover, the Hon'ble Law Minister had also informed the Chairman that another motion was given in the Lok Sabha, pursuant to which the Chairman directed the Secretary General to "*take necessary steps in this direction*".

16. It is pertinent to note that the then Chairman of the Rajya Sabha resigned as the Vice-President on 21 July 2025, and the Deputy Chairman assumed charge under Article 91 of the Constitution. Upon scrutiny of the notice, the Deputy Chairman, on 11 August 2025, concluded that the motion contained infirmities and that the notice was not in order and thus not admitted. The Hon'ble Deputy Chairman, Rajya Sabha, directed that the Secretary General, Lok Sabha, may be informed accordingly. This decision of refusal to admit the motion was communicated in writing by the

[22] The then Chairman, specifically mentioned that "**Then the right of the Speaker or the Chairman to admit or reject the motion is not there**" **(Pg. 47 of the Petition @ Para 1)**.

Rajya Sabha Secretariat to the Lok Sabha Secretariat on the same day, i.e. 11 August 2025.

17. Thus, after following the due process, the Speaker admitted the motion received from members of the Lok Sabha and made an announcement to this effect on 12 August 2025 and kept it pending for inquiry. Accordingly, considering the fact that Rajya Sabha's motion was not admitted, on 12 August 2025, only one House, i.e., Lok Sabha, had an admitted motion for the removal of the Petitioner.

18. Therefore, the requirement of a joint committee under the proviso to Section 3(2) was not triggered in these circumstances. The proviso operates only when (i) notices of motion are given on the same day and (ii) both the Houses admit the motion. The Hon'ble Speaker, before constituting the Committee, waited for the Rajya Sabha's decision, and only when he was formally informed that the Rajya Sabha motion was not admitted, the Committee was constituted on 12 August 2025.

19. It is pertinent to note that while the proviso bars constituting a Committee unless both Houses admit the motion, it nowhere says that the rejection of a motion in one House automatically invalidates an admitted motion in the other. To hold otherwise would allow one House's refusal to admit the motion (potentially even a nefarious rejection) to defeat the removal process approved by the other House, which is neither the intent of the law nor a reasonable interpretation of the proviso.

20. The Petitioner's contention that the constitution of the Committee is invalid "*because the motion was not admitted in both Houses*" is misplaced. Such a situation arose only because the Rajya Sabha's motion failed to meet the threshold for admission. The law does not prohibit the Speaker from acting on a properly admitted motion of one House when the notice of motion given in the other House did not culminate in an admission. It is humbly submitted that any other interpretation would undermine the removal process by effectively giving one House a veto over the initiation

of an inquiry, even where the other House has fulfilled all statutory requirements.

21. At this juncture, it is submitted that it is a settled law that a proviso has to be understood from the language used in the main provision and not vice versa. Moreover, it is also a settled law that if the substantive provision is clear on fair interpretation, the language in the proviso cannot be used to defeat the basic intent expressed in the said provision.[23]

## C. DEMONSTRATIVE, GROSS AND REAL PREJUDICE SHOULD BE SHOWN FOR INVOKING ARTICLE 32

22. It is submitted that the Petitioner has not shown any "*demonstrable, gross or real prejudice*" caused to him by the manner in which the process for removal has been initiated, even if a purported procedural lapse is assumed to have taken place. It is submitted that such a demonstrable, gross or real prejudice must be proved by the Petitioner.[24] In substance, the Petitioner's complaint is that he lost the "benefit" of a joint committee constituted by both the Speaker and the Chairman. However, this does not translate into any prejudice or a real or demonstrable disadvantage.

23. The Committee constituted by the Speaker is a duly authorized body formed strictly in conformity with Section 3(2) (a), (b) and (c) of the Act. The Committee is bound to conduct its investigation fairly and give the Petitioner full opportunity to be heard. The Petitioner remains entitled to submit his defence, adduce evidence, cross-examine witnesses and

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[23] See ***Dwarka Prasad v. Dwarka Das Saraf***, (1976) 1 SCC 128 ¶16; ***Vishesh Kumar v. Shanti Prasad***, (1980) 2 SCC 378 ¶9; ***S. Sundaram Pillai v. V.R. Pattabiraman***, (1985) 1 SCC 591 ¶27; ***J.K. Industries Ltd. v. Chief Inspector of Factories and Boilers***, (1996) 6 SCC 665 ¶35; ***Director of Education (Secondary) v. Pushpendra Kumar***; (1998) 5 SCC 192 ¶8; ***Rohitash Kumar v. Om Prakash Sharma***, (2013) 11 SCC 451 ¶20.

[24] See ***ECIL v. B. Karunakar***, (1993) 4 SCC 727 ¶30[v]; ***State Bank of Patiala v. S.K. Sharma***, (1996) 3 SCC ¶28, 33(3) & 33(7); ***State of U.P. v. Sudhir Kumar Singh***, (2021) 19 SCC 706 ¶36 & 42.1-42.5; ***S.P. Gupta v. U.P. State Electricity Board***, (1991) 2 SCC 263 ¶5; ***State of Karnataka v. Sri Darshan***, 2025 SCC OnLine 1702 ¶20.1.3-20.1.7; ***L&T Housing Financing Limited v. Trishul Developers***, (2020) 10 SCC 659 ¶19.

respond to any allegations before this Committee, in the same manner as he would before a joint committee.

24. It is respectfully submitted that the ultimate safeguard of Parliamentary approval under Article 124(4) also remains intact. Even if the Committee holds that the Judge is guilty of any misbehaviour or suffers from any incapacity, then the motion, along with the report of the Committee, would be taken up for consideration by the Houses of Parliament. Removal of a Judge cannot take place except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of the House present and voting. Therefore, a procedural divergence (a single-House Committee as opposed to a Joint Committee) does not undermine the fairness of the process or the Petitioner's ability to defend himself. He suffers no substantive disadvantage at this stage.

25. It is submitted that the proviso to Section 3(2) is primarily for avoiding an anomalous situation arising out of a possibility of two simultaneous committees being appointed and to avoid a contingency where two motions remain "pending" with two different committees investigating the same act. The proviso does not confer any right on anyone, including the recipient of the charge memo by the Committee. The real purpose behind the proviso is for the benefit of the members.

26. When the constitution of the Committee jointly does not confer any right, there can be no prejudice. The prejudice can possibly arise in the event that both motions are given on the same day and are admitted, and the Speaker or the Chairman alone constitute a Committee.

27. The extraordinary remedy under Article 32 of the Constitution is available only to address breaches of fundamental rights or patent gross injustice. In the present case, the Petitioner's grievances are at best technical and procedural. He has not pointed to any breach of his

fundamental rights. It is submitted that the Petitioner's rights are safeguarded by the presence of an impartial and independent Committee and the multiple stages of decision-making that lie ahead.

## D. DEPUTY CHAIRMAN TO EXERCISE THE FUNCTIONS OF THE CHAIRMAN WHEN THE OFFICE IS VACANT AS PER ARTICLE 91 OF THE CONSTITUTION

28. It is submitted that Article 91(1) of the Constitution of India explicitly provides for the contingency where the office of Chairman of the Rajya Sabha is **vacant**. In such a case, the duties of the office shall be performed by the Deputy Chairman of the Rajya Sabha. The Constitution thus, ensures that the absence or vacancy of the Chairman does not paralyze the functioning of the House. The Deputy Chairman automatically steps into the role by a constitutional mandate.

29. It is humbly submitted that a statute cannot be read in isolation to negate a clear constitutional authorization. In the present case, the trigger for invoking Article 91 was the resignation of the Hon'ble Chairman from the office of the Vice-President on 21 July 2025. Since then, by operation of law, the Deputy Chairman of the Rajya Sabha was empowered to perform all duties and exercise all the powers of the Chairman, including admitting/refusing to admit motions, as envisaged under Section 3(1). Therefore, the Deputy Chairman's authority in this capacity flows directly from the Constitution, and any other interpretation would render Article 91, in the context of the Act, unworkable, redundant, and otiose.[25]

[25] It is a settled position of law that no provision of the Constitution of India can be considered to be otiose. See ***Welfare Assn., A.R.P. v. Ranjit P. Gohil***, (2003) 9 SCC 358 ¶28; ***Ashoka Kumar Thakur v. Union of India***, (2008) 6 SCC 1 ¶126; ***Chief Justice of A.P. v. L.V.A. Dixitulu***, (1979) 2 SCC 34 ¶74; ***Jindal Stainless Ltd. v. State of Haryana***, (2017) 12 SCC 1 ¶13 & 15; ***Jayant Verma v. Union of India***, (2018) 4 SCC 743 ¶25; ***Rajendra Diwan v. Pradeep Kumar Ranibala***, (2019) 20 SCC 143 ¶75.